



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Application of San Diego Gas & Electric Company
(U 902 M) for Authority, Among Other Things, to
Increase Rates and Charges for Electric and Gas
Service Effective on January 1, 2016.

Application No. 14-11-003
(Filed November 14, 2014)

Application of Southern California Gas Company
(U 904 G) for Authority to Update its Gas Revenue
Requirement and Base Rates Effective on January
1, 2016.

Application No. 14-11-004
(Filed November 14, 2014)

**OPENING COMMENTS ON THE PROPOSED DECISION OF SAN DIEGO GAS &
ELECTRIC COMPANY (U902M) AND SOUTHERN CALIFORNIA GAS COMPANY (U904G)**

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RECORD CITATION FORM

Citations to the record transcript: “Tr. [Volume number]: [page number(s)]: [line number(s)] (witness surname).” *E.g.*, Tr. V26:1086:17-21 (Ayala).

Citations to Prepared Testimony identified as exhibits in this case shall use the exhibit numbers assigned by the ALJs. Cite as follows: Ex. [exhibit number] [party]/[witness surname] at [page:line number(s) and/or footnote number]. *E.g.*, Ex. 21 SDG&E/Geier at 19:5-6 and n.2.

Glossary of Acronyms	
ACR	Assigned Commissioner’s Ruling
ALJ	Administrative Law Judge
COL	Conclusion of Law
D.	Decision
ECAC	Energy Cost Adjustment Clause
Edison	Southern California Edison Company
Ex.	Exhibit
FERC	Federal Energy Regulatory Commission
FOF	Finding of Fact
ICP	Incentive Compensation Program

MGRA	Mussey Grade Road Alliance
OP	Ordering Paragraph
ORA	Office of Ratepayer Advocates
PBR	Performance-Based Ratemaking
PD	Proposed Decision
PG&E	Pacific Gas and Electric Company
Post-Test Year Settlement Agreement	<i>Post-Test Year Period for San Diego Gas & Electric Company and Southern California Gas Company</i>
P.U. Code	California Public Utilities Code
RO	Results of Operation
SDG&E	San Diego Gas & Electric Company
SEC	Securities and Exchange Commission
Sempra Utilities	SDG&E and SoCalGas
Settlement Agreements	TY 2016 Settlement Agreement and Post-Test Year Settlement Agreement
SoCalGas or SCG	Southern California Gas Company
TURN	The Utility Reform Network
TY 2016 Settlement Agreement	<i>Settlement Agreement regarding SDG&E's TY 2016 General Rate Case Revenue Requirement, Including Attrition Years 2017 and 2018</i>

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I. INTRODUCTION

Pursuant to Commission Rule 14.3, SDG&E and Southern SoCalGas (jointly, Applicants) submit these comments on the May 19, 2016 PD of ALJs John Wong and Rafael Lirag. Applicants thank the ALJs for their conscientious consideration of the issues throughout this proceeding.

The PD offers troubling findings and rulings that fail to acknowledge or apply the important constitutional legal principles that form the very foundation of regulatory ratemaking. The PD's failure to apply the retroactive ratemaking doctrine amounts to legal error, and incorrectly adjusts the Applicants' revenue requirements downward by roughly \$21 million for SDG&E and \$20 million for SoCalGas. The PD also erred in converting factually incorrect extra-record argument with no evidentiary basis into misguided and dangerous policy precedent for Applicants' ICP, contrary to the Commission's policies on safety and longstanding regulatory law. If not corrected, the PD would limit Applicants' ability in being able to timely and appropriately incent the proper employee behavior to drive safety.

A. The PD Must Be Corrected to Address These Legal and Factual Errors.

To correct errors, the PD must be modified as follows:

- **Tax Repairs Deduction:** Correct the PD to acknowledge and apply the law on retroactive ratemaking, removing the rate base reduction and the discussion regarding Rule 1 and distinguishing Applicants' factual circumstances according to the record in this case and in the GRC 2012 case; or, at minimum, implement alternative measures as discussed herein. The tax memorandum account language should be revised to match the Edison outcome.
- **Bonus Depreciation:** Modify the PD to adopt the TY 2016 Settlement Agreements without any adjustments to account for bonus depreciation impacts that arose after the settlements were executed, as set forth in concurrently filed joint comments; alternatively, align the PD with Resolution L-411 and adopt the same memorandum account treatment for bonus depreciation as authorized for PG&E.

- **ICP:** Correct the PD to eliminate all discussion, findings of fact and conclusions regarding ICP that is not supported by the evidentiary record in this case, i.e., adopt only the Settlement Agreement amounts for ICP.
- **Miscellaneous Modifications:** The PD should be corrected to: (1) adopt Applicants' Post-Test Year Settlement Agreement, as set forth in ORA's concurrently filed comments; (2) clarify acknowledging the adoption of SDG&E's Performance Based Ratemaking proposal as filed; (3) update the RO model and (4) other Ordering Paragraph Modifications.

To understand the PD's errors, it is helpful to review the due process and public policy underpinnings behind the regulatory environment in California, and why certainty in the process and law is important to utilities, customers, investors, and regulators. The Commission takes the place of the market in an unregulated environment, and sets "just and reasonable" rates based on the well-established principle that a "utility is entitled to all of its reasonable costs and expenses, as well as an opportunity to earn a rate of return on the utilities' rate base"¹ according to the utility's Fifth Amendment rights.² While an unregulated company is able to react to cost changes closer to real time, subject to market forces, utilities instead must rely on the litigated process set forth via regulatory proceedings to establish and prove their forecasted business costs. Applicants use a forecasted test year methodology for the cost of service portion of their general rate case, which provides the Commission with a "snapshot in time" of all of their forecasted costs over the test year period, for every aspect of the business. The Commission's cost of capital proceeding is separately designed to provide the utility with a return on equity sufficient to attract capital from the market to invest in necessary infrastructure, to provide safe and reliable service to customers.

However, as the Commission has stated, although "the utility is generally entitled to its reasonable costs and expenses," it is only offered "the opportunity, but no guarantee, to earn a rate of return on the utility's rate base."³ This means that a utility must be well-managed in order to earn its authorized rate of return. The forecasted test year is designed to provide utility management with the flexibility to make important resource allocation decisions within the rate case cycle, to provide safe and reliable service, as well as to provide incentives for the utility to maintain reasonable efficiency in safely

¹ D.03-02-035, 2003 Cal. PUC LEXIS 93 at *10; *see also* D.14-08-011, at 31 ("[T]he basic principle [of ratemaking] is to establish a rate which will permit the utility to recover its cost and expenses plus a reasonable return on the value of the property devoted to public use[.]" (quoting *Southern California Gas Company v. Public Utilities Commission* (1979) 23 Cal.3d 470, 476)).

² U.S. Const. amend. V; *see, e.g., Missouri ex rel. Southwestern Bell Tel. Co. v. Public Service Comm'n*, 262 U.S. 276, 290 (1923) (Brandeis, J., concurring) ("The thing devoted by the investor to the public use is not specific property, tangible and intangible, but capital embarked in the enterprise. Upon the capital so invested the Federal Constitution guarantees to the utility the opportunity to earn a fair return."); *see also* Cal. Const. Art. I § 7.

³ D.12-11-051 at 10.

serving customers. Efficiency gains are captured in the next rate case, to become ratepayer benefits in the next rate case and beyond.⁴ If a utility is well-managed, investors will also have incentives to continue to provide capital, so that consumers continue to receive safe, reliable service at just and reasonable rates. Thus a well-managed, consistently regulated, financially strong and healthy utility, as compared to other utilities, matters to our customers, because “positive investor perceptions, and by proxy our resulting financing ability, have the potential to change overall investment risk and should result in lower long-term debt rates, now and in the future.” (Ex. 200 Schlax at 6.)

B. Due Process Requires Ratemaking to Operate Prospectively, Not Retroactively.

The PD’s failure to correctly acknowledge and apply the retroactive ratemaking doctrine amounts to constitutional and statutory legal error. The retroactive ratemaking doctrine is based on well-established due process principles that form the basis for public utility regulation and ratemaking in federal and state jurisdictions. Due process requires that legislation is prospective in nature.⁵ Ratemaking is a legislative function, and must operate prospectively. When a public utilities commission approves a lawful rate, it creates a legitimate expectation that the utility can collect that rate until it is changed prospectively. And due process requires regulators to honor distinct, investment-backed expectations. As the U.S. Supreme Court has recognized, unexpected and inconsistent regulation increases risk in the utility investment market could raise Fifth Amendment issues:

The risks a utility faces are in large part defined by the rate methodology because utilities are virtually always public monopolies dealing in an essential service, and so relatively immune to the usual market risks. Consequently, a State's decision to arbitrarily switch back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others would raise serious constitutional questions.⁶

Because these constitutional due process principles apply universally, the prohibition on retroactive ratemaking provides predictability, finality and stability to the public utility industry.

⁴ For example, Sempra Energy launched an efficiency initiative on April 5, 2016 across all business units, seeking employee-driven new, innovative, and forward-looking ideas, including but not limited to ideas to simplify, improve efficiency, and optimize operations.

⁵ *Strauss v. Horton*, 46 Cal.4th 364, 473 (Cal. 2009); *McKeon v. Hastings College*, 185 Cal.App.3d 877, 888 (Cal. App. 1st Dist. 1986)(finding that administrative regulations are construed prospectively to avoid a declaration of unconstitutionality).

⁶ *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 315 (1989); see also *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 527 (2002) (“[T]here may be a taking challenge distinct from a plain-vanilla objection to arbitrary or capricious agency action if a rate making body were to make opportunistic changes in rate setting methodologies just to minimize return on capital investment in a utility enterprise.”).

Conversely, a regulators' failure to appropriately apply the retroactive ratemaking doctrine threatens the stability, predictability, and finality that provides investor incentives, as the D.C. Circuit noted in applying the retroactive ratemaking doctrine in *CPUC v. FERC*:

Refund of such property, or its earnings, would effectively force [the utility] to return a portion of rates ... This kind of post hoc tinkering would undermine the *predictability* which the doctrine seeks to protect. The [Natural Gas] Act's limited provision for refunds reflects a congressional determination that parties in the industry need to be able to rely on the *finality* of approved rates, and that this interest outweighs the value of being able to correct for decisions that in hindsight may appear unsound.⁷

The D.C. Circuit also noted that failing to correctly apply the retroactive ratemaking doctrine threatens regulation's ability to accurately serve as a proxy for market forces (*id.*):

The rule against retroactive ratemaking also tends to make this highly regulated market approximate ordinary ones, where, for example, General Motors may not, after a sale, demand another \$500 to cover its costs, and a buyer may not demand a refund because he just discovered that a competitor had been offering similar cars for less. The doctrine is, of course, a two-way street. It bars the "Commission's retroactive substitution of an unreasonably high or low rate with a just and reasonable rate."

The PD's claim that a just and reasonable rate requires hindsight correction is exactly backwards: "Merely because the timing of the change in accounting method fell between GRC reviews does not mean the utility should receive the benefits of such timing." (PD at 194.) The timing of the change is exactly why the PD's rate base reduction is unjust. A just and reasonable rate, by law, is not subject to retroactive ratemaking. Finality in rates is exactly what due process requires.

C. Due Process Requires the Commission to Follow Its Own Rules and Procedures.

As discussed above, Applicants rely on the litigated process in CPUC proceedings to establish and prove their forecasted costs of doing business. Just as investors rely on a stable regulatory process, Applicants also rely on consistency and reliability in Commission procedures in order to plan and safely and reliably serve their customers. The constitutional bounds of due process require the Commission to proceed in a manner required by law and to follow its own rules⁸ and in a timely fashion as required by statute. Commission rules and processes should remain stable and predictable, so that Applicants have *notice* of the applicable rules and how to follow them; Applicants can expect *consistency and fairness* in how the rules are applied; and Applicants can expect *finality* in their established rates.

⁷ *Cal. Pub. Util. Comm'n v. FERC*, 894 F.2d 1372, 1383 (D.C. Cir. 1990) (emphasis added; quotes omitted).

⁸ See *Southern Cal. Edison Co. v. PUC*, 140 Cal.App.4th 1085, 1106 (2006) (annulling the Commission's decision where the Commission failed to proceed in the manner required by law, in departing from the scoping memo and violating its own procedures).

The PD's incorrect conclusions on tax repairs not only constitute retroactive ratemaking, they are founded in a faulty process, retroactively applied. The PD's claims that Applicants had a duty under existing Commission procedures to update information well beyond what the Rate Case Plan requires are incorrect, and in addition would create the potential for a never-ending rate case, to the detriment of Applicants and customers. Similarly, the PD's entire discussion on ICP is factually incorrect, as a result of due process failings. The PD prejudices issues that are not within the scope of the proceeding and not on the record in this case, which could, if not corrected, interfere with Applicants' ability to improve safety via timely incentives for proper employee behavior, thus confounding the Commission's policies and longstanding legal precedent promoting safety and settlement. The PD's potentially disastrous result stems from haphazard post-hearing and post-settlement procedures, inconsistent with due process, which do not form a solid foundation for the Commission's final decision. To uphold the PD would vitiate the very purpose of the Commission's hearing procedures, which is to develop record evidence, tested through cross-examination and orderly process that can support its findings of fact and a reasoned decision. Instead, the Commission should adopt the Settlement Agreements regarding ICP, which resolve all contested ICP issues, and are grounded in the record.

D. Due Process Requires A Presumption of Good Faith.

Good faith should be presumed on Applicants' part, in the absence of evidence to the contrary.⁹ But the PD is tinged throughout with suggestions and hints of impropriety on Applicants' part, with no basis in the record. For example, Rule 1.1 is discussed in the context of the PD's Tax Repairs section with no evidentiary basis of wrongdoing. Similarly, the PD's ICP discussion evokes claims of "perverse" ICP incentives and financial "rewards" for "unsafe incidents" – without a shred of evidentiary support. These baseless conclusions run afoul of due process. Further, the Commission "is not the owner of the property of public utility companies," and should not substitute its own hindsight judgment for that of a "board of directors [exercising] proper discretion about [a] matter requiring business judgment"¹⁰ – particularly where there is no evidence to support it. This is consistent with the Commission's longstanding policy not to micromanage Applicants' business decisions, including compensation, which should be upheld in the final decision.

⁹ See *West Ohio Gas Co. v. PUC*, 294 U.S. 63, 72 (1935) ("Good faith is to be presumed on the part of the managers of a business.").

¹⁰ *Missouri ex rel. Southwestern Bell Tel. Co. v. Public Service Comm'n*, 262 U.S. 276, 288-89 (1923).

II. TAX REPAIRS DEDUCTION

Notwithstanding the unique record facts in this case, the PD essentially follows the decision rendered in Edison's 2015 GRC on this tax issue.¹¹ For example, the discussion of the Z-Factor contained in both the Edison decision and the PD (at 200) displays clear error by maintaining that Applicants' voluntary election to change their accounting methodology would meet the stringent requirements of a Z-Factor event. The voluntary election made by Applicants here would fail to meet multiple Z-Factor criteria, because, for example: (i) there was no exogenous event, (ii) there was no cost impact beyond the utility's control, and (iii) the change was made in the normal course of doing business.¹² See D.15-11-021 at 460.

If the Commission intends to treat Applicants in the same manner as it treated Edison on the tax repairs deduction issue, the PD must be modified to achieve that consistency. Further, the Commission has no cause or factual foundation for a Rule 1 concern.¹³ That language should be removed because it is unjustified, lacks foundation in the record, and is highly prejudicial. Applicants' followed the Commission's own Rate Case Plan¹⁴ and Rules of Practice and Procedure. Furthermore, a change in circumstances should not necessarily reflect a material change in revenue requirement.¹⁵

A. The PD does not analyze Applicants' unique facts in the 2012 GRC.

While Applicants believe the Commission reached the wrong result in the Edison GRC, Applicants were not involved in developing that docket's record evidence. Thus, Applicants can only speak to their own facts and circumstances, several of which further demonstrate that Applicants did not ignore ratepayers' interests in the 2012 GRC cycle. First, Applicants reduced their rate base by significantly increasing deferred taxes to reflect the impact of the repairs method change on prior tax years via a Section 481 adjustment. TURN has acknowledged the ratepayer benefits associated with this

¹¹ A.13-11-003.

¹² See A.13-11-003, Southern California Edison Company's (U-338-E) Comments on Proposed Decision on Test Year 2015 General Rate Case for Southern California Edison Company (October 8, 2015) at 19-20; San Diego Gas and Electric Company (U-902-E) Opening Comments on Proposed Decision on Test Year 2015 General Rate Case for Southern California Edison Company (October 8, 2015) at 16-17. See also, A.14-11-003/004, Ex. 246 SCG/Reeves at 4-5 and Ex. 249 SDG&E/Reeves at 24-25.

¹³ Applicants do not suggest that Edison's record merits such language in D.15-11-021. Applicants have however presented additional evidence that may not be in the record in Edison's GRC that are deserving of additional consideration and weight.

¹⁴ See D.07-07-004.

¹⁵ See, e.g., the water utilities' rate case plan, D.07-05-062, Appx. A at A-9 (allowing for discretionary updates to record where there is a material change in revenue requirement as a whole, not individual cost items); see also *West Ohio Gas Co. v. PUC*, 294 U.S. 63, 77 (1935) (holding that a utility was denied due process where a utility was not allowed to present evidence of the totality of its costs).

adjustment.¹⁶ In fact, Applicants' treatment of repairs in this GRC represents the proper protocol under regulatory law and federal income tax law of how a utility should reflect the impacts on prior tax years for changes in methods of accounting. The PD recites this fact in its discussion of parties' positions, but ignores it in its analysis. This is evidence that Applicants did in fact capture on behalf of ratepayers tax benefits accrued in the 2012 GRC cycle.

Second, Applicants proposed a post-test year attrition mechanism containing an earnings-sharing component that, if adopted, would have further captured and provided to ratepayers a share of the shorter termed benefits realized from the method change. The Commission did not adopt that mechanism in the 2012 GRC. Again, the PD's analysis ignores this material evidence of Applicants' intent to share earnings-related savings with ratepayers in between GRC cycles and ignores the cost of evaluating such methodology changes born by shareholders.

Third, Applicants remain under IRS audit on the repairs deduction for 2011 and 2012, and shareholders bear the risk of disallowances of tax benefits. This is evidence of Applicants' intent to protect ratepayers from IRS audit risk, and is another material fact ignored in the PD's analysis. Under Applicants' approach, the ratepayers bear no risk if the IRS disallows all or part of the deduction. But if the PD's approach is adopted, ratepayers should bear the risk of an adverse IRS audit finding.

B. The PD's claim that Applicants knowingly withheld information in their 2012 GRC is unfounded and prejudicial.

The PD levies a serious allegation that Applicants knowingly withheld material information regarding an accounting method change in the 2012 GRC, resulting in unjust shareholder enrichment. (See PD at 191.) This is factually and legally wrong. The timing of the relevant IRS Revenue Procedures, and Applicants' interest in evaluating the method changes to fully understand the known impact of the method change and make a final decision on an election are a matter of record. The record also shows that Applicants complied with the Rate Case Plan's explicit and clear rules.

Applicants complied with the Rate Case Plan's explicit and clear rules in the 2012 GRC. On December 15, 2010, Applicants filed their respective 2012 GRC applications, pursuant to the procedures as contained in the operative Rate Case Plan, thereby starting the clock on the proceeding. The Rate Case Plan calls for a proposed decision before the beginning of the test year (i.e., January 1, 2012). See D.07-07-004, Appendix A at A-16. According to the Rate Case Plan, on Day 0 (application filing date), "[t]he application shall include final exhibits . . . and all other evidence that is filed shall incorporate the

¹⁶ See Ex. 400 TURN/Marcus at 20-23.

changes, additions, and deletions required for acceptance of the NOI.” *Id.* at A-12. Regarding updates to the “application, final exhibits, and all other evidence,” the Rate Case Plan is explicit in prohibiting general updates: “***No bulk or major updating amendments or recorded data to amend the final exhibits, prepared testimony, or other evidence shall be allowed***, except as provided . . . on Day 280 [Update Phase]. . . .” *Id.* (emphasis added). The Rate Case Plan strictly limits updates to specific issues, to be presented in testimony form, at the time the update testimony is due:

Applicant, staff, or any interested party may distribute in prepared testimony form, and serve on all parties, consistent with the Rules of Practice and Procedure, showings containing the most recent data for the other than electric rate design factors described in the Standard Updating Filing Requirements list on page A-35 [sic]. **This is the only updating which will be permitted.**¹⁷

The Rate Case Plan goes on to provide that “[a]ny update testimony or exhibits filed by applicant, staff or interested party shall be limited to” several specific areas,¹⁸ and when the update testimony is due. “Known changes due to governmental action such as changes in tax rates, postage rates, or assessed valuation” are listed among the types of updates that are allowed.¹⁹ In the 2012 GRC, ALJ Wong scheduled the update testimony due date for February 17, 2012.²⁰

The record facts show that Applicants’ GRC applications and corresponding witness testimonies and workpapers reflected their case-in-chief and contained their test year forecasts, including forecasts for income taxes, and that update testimony was appropriately filed at the time required by the ALJ’s schedule, and in accordance with the Rate Case Plan. For SDG&E,²¹

- On August 19, 2011, approximately eight months after Day 0, the IRS issued guidance on the safe harbor method associated with the accounting method change. The record does not establish that SDG&E knew that it would make the method change on Day 0.
- On November 30, 2011, evidentiary hearings commenced on an already much delayed schedule, only a month before the test year’s onset. The record does not establish that SDG&E knew at that time that it would make the method change.
- On February 17, 2012, over a month after the start of the test year, SDG&E served update testimony. Meanwhile, only two weeks earlier, SDG&E engaged an accounting firm, at shareholder expense, to do a preliminary scoping to confirm the potential benefits of making an accounting method change. The record does not establish that SDG&E knew it would make an accounting method change at the time Update Testimony was served. Thus, there was no change to SDG&E’s forecasted income tax expense caused by an affirmative act and final decision to change the method.

¹⁷ *Id.* at A-15 (emphasis added).

¹⁸ *Id.* at A-36.

¹⁹ *Id.*

²⁰ See Tr. V33:4495:11-25 (ALJ Wong).

²¹ See Opening Brief of Non-Settled Issues of ... [SDG&E] and ... [SCG], Appendix B, Timeline of Events – Tax Repairs Deduction (October 12, 2015).

- On April 2, 2012, over three months after the start of the test year, SDG&E commissioned a full study of the accounting method change under the safe harbor method, at shareholder expense. The record does not establish that SDG&E made any decision to file for the method change.
- On July 31, 2012, by ALJ ruling, the case was officially submitted, seven months after the start of the test year. The record does not establish that SDG&E decided to make the election at this date.
- On September 5, 2012, nine months after the start of the test year, SDG&E decides to make the method change by filing the paperwork (Form 3115) with the IRS, and shortly thereafter filing its 2011 tax return.
- On November 6, 2012, over eleven months after the start of the test year and over three months after the ALJ's written ruling which signified the close of the record, Sempra Energy's 10-Q report discloses income tax benefit in 2012 resulting from SDG&E's accounting method change, in accordance with SEC reporting requirements.²²
- In February 2013, over a year after the start of the test year, Sempra Energy's 2012 Form 10-K Annual Report discloses SDG&E's tax benefits for 2011-2012 resulting from the method change as required under the SEC standards.
- On March 29, 2013, fifteen months after the start of the test year, the Commission issues its proposed decision.
- On May 9, 2013, over sixteen months delayed beyond the start of the test year, the Commission issues its final decision.

For SoCalGas,²³

- On March 7, 2012, over fourteen months after Day 0, beyond the Update Phase, and over two months delayed beyond the start of the test year, the IRS issued guidance on the accounting method change for non-electric assets. The record does not establish that SoCalGas knew that it would make the method change on Day 0 or when Update testimony was served.
- On March 26, 2012, almost three months after the start of the test year, SoCalGas engaged an accounting firm, at shareholder expense, to do a preliminary scoping of the potential benefits of making an accounting method change. The record does not establish that SoCalGas knew it would make an accounting method change.
- On July 18, 2012, over six months after the start of the test year, SoCalGas commissioned a full study of the accounting method change, at shareholder expense. The record does not establish that SoCalGas made any final decision to file for the method change.
- On July 31, 2012, by ALJ ruling, the case was officially submitted, seven months after the start of the test year. The record does not establish that SoCalGas decided to make the election.

²² The PD took official notice of Sempra Energy's Form 10-Q Quarterly Report. PD at 200, fn. 76.

²³ *Supra*, Applicants' Opening Brief, Appendix B.

- In February 2013, over a year after the start of the test year, Sempra Energy's 2012 Form 10-K Annual Report discloses SoCalGas' tax benefits that would result from the method change.
- On March 29, 2013, fifteen months after the start of the test year, the Commission issues its proposed decision.
- On May 9, 2013, over sixteen months after the start of the test year, the Commission issues its final decision.

The record does not establish anything amounting to withholding of material information by either SDG&E or SoCalGas, in contravention of the Rate Case Plan procedures or otherwise. The fact that both utilities did not even begin a full method change study until well after the onset of test year 2012 refutes the PD's notion that Applicants knowingly withheld, and did not timely disclose, key evidence impacting its test year income tax forecast in violation of the Rate Case Plan. In fact, the Commission's decision was substantially delayed beyond the Rate Case Plan schedule, which created the situation for which Applicants are now being scrutinized after-the-fact. The Commission may still believe that regardless of the procedural delays noted above, Applicants should have alerted the Commission of their intent to apply for the method change before the final decision date (discussed in the next section), but there is no factual basis to allege wrongdoing or withholding of material evidence.

C. The PD creates the potential for a never-ending rate case.

The PD suggests that Applicants had a duty to inform the Commission and parties of the developments regarding the change in accounting method before the final decision (May 9, 2013). *See* PD at 199. But there is no such rule in the Commission's Rate Case Plan or procedures. Applicants can only find examples of a duty to inform in the past under very limited circumstances – for example, in the former ECAC proceedings, based on historic costs, during negotiations for power sale contracts that would have a “major impact” on revenues,²⁴ or as in the water rate case plan, which allows for discretionarily (not required) updates.²⁵ Those examples would only allow updates with a material change in revenue requirements – not discrete cost decreases – as due process requires.²⁶ Notably, there

²⁴ *See* D.95-12-008 at 19, *citing* D.90-01-048 at 189-90.

²⁵ D.07-05-062, Appx. A at A-9 (“Any such request must, at a minimum, show that the addition sought: (1) causes material changes in revenue requirement; (2) is the result of unforeseeable events; (3) is not off-set by other cost changes; and (4) can be fairly evaluated with proposed schedule changes that have been agreed to by all parties.”).

²⁶ *See, e.g., West Ohio Gas Co. v. PUC*, 294 U.S. 63, 77 (1935) (“If the appellee may be heard to say that during some part of the term the valuation was too high, the company must be free to urge that at other times it was too low. Upon the record now submitted to us no such issue is involved. To bring it into the case at all there is need of a new hearing with a new reckoning of the rate base, unhampered by restrictions to any single point of time. Only in that way can review be full and fair.”).

is no such provision in the Rate Case Plan for guidance on circumstances where the Commission would discretionarily *allow* for such an update. Without such a provision, there can be no duty invoking Rule 1.

The Rate Case Plan and the Scoping Memo process offer notice, certainty, and finality, by setting dates that allow only for specific updates during a defined period, with a set time to have evidentiary hearings on those updates. The Commission's statutory duty (under P.U. Code §1701.5) to resolve rate cases within 18 months also indicates a need for finality. Inherent in the Rate Case Plan's forecasted process is the need to pick a firm date upon which to base the forecasts; otherwise the proceeding would continue to churn as new cost data and information arise on a daily basis. If firm dates are not enforced, the proceeding would have no end. ALJ Lirag noted the unworkability of this type of process, which would continually and selectively update data points, on a never ending basis:

[W]e're going to have to use data at a certain – at a certain date in order to make a forecast. And as we keep moving the date forward, we get more accurate results. But at some point, you have to stop at a certain point in order to be able to make a forecast.²⁷

Applicants agree. And the selective updating of some but not all changes that occur from the date a forecast is provided does not assure accuracy. If Applicants are *required* to update cost decreases that do not fall into the category or time frame that is allowed for updates, then they must also be *allowed* to present evidence supporting offsetting increases, some of which may increase their cost forecasts.

An unending duty to update in an unending rate case would be inconsistent with Commission policy that neither utilities nor customers should be harmed by a delay: “[W]here a delay in the proceeding results from circumstances largely beyond any one party's control, we find little policy basis for allowing ratepayers a gain that results from such delay and that comes at the utility's expense.”²⁸ A GRC delay beyond the Scoping Memo and Rate Case Plan schedule “should not result in either the utility foregoing revenue necessary for just and reasonable rates or the ratepayers paying less (or more) than reasonable rates.”²⁹ The PD's view would harm a utility forced to decide between either suffering a revenue shortfall or presenting evidence on offsetting increases, thus extending harmful delays. And the more a Commission rate case decision is delayed, the less opportunity a utility has to earn its authorized return. Even worse, a utility could be held responsible for a Rule 1 violation by the mere passage of time. The PD's view would also deter settlement negotiations, if parties retained a continuing obligation

²⁷ Tr.V19 at 2118:19 – 2119:1.

²⁸ D.98-12-078, 1998 Cal. PUC LEXIS 973 at *18.

²⁹ D.03-05-032 (“This proceeding is behind the schedule adopted in the Scoping Memo ... and behind a schedule using the Rate Case Plan as a guide. This delay ... should not result in either the utility foregoing revenue necessary for just and reasonable rates or the ratepayers paying less (or more) than reasonable rates.”).

to raise new or changed facts and circumstances despite settled terms, contrary to Commission policy supporting settlement.

In Applicants' 2012 GRC, the Commission issued *four extensions* of its final decision, each time citing the complexity and size of the application as its reason for the delay.³⁰ The Commission cannot have reasonably expected Applicants as well as all other participating parties to continually add to the complexity and size of the 2012 case by continuing to update. For example, there were 64 IRS revenue procedures issued in 2014, which does not account for the other guidance documents issued by the IRS in any given year.³¹ Even without additional updates, a final decision was over fifteen months delayed per the scoping memo, and all of Applicants' forecasts were out of date – *i.e.*, all expenses were recorded. An entire GRC could have been filed, litigated, and concluded in that span of time. To impose Rule 1 penalties for failing to update during such a lengthy delay is patently unreasonable.

The sheer unworkability of the PD's approach should cause the Commission to reconsider and to recognize the parameters of its own procedural rules. If the Commission decides that this process should be changed to require additional updating beyond that which is required by the Rate Case Plan, the Scoping Memo, and ALJ rulings, then those rules should be applied prospectively and should not serve as the basis to adjust the revenue requirement in this case. Most importantly, the Commission cannot establish a new \$3 million "materiality" test (PD at 196) – which is arbitrary and wholly lacking in foundation – for which the utilities are obligated to reopen the record without affirmatively finding that the utilities will similarly be entitled to reopen the record for any increases in cost that reach the \$3 million threshold. Notably, there is no such provision in the applicable Rate Case Plan in this case to provide Applicants with notice that the Commission would even discretionarily *allow* for such an update. Although the Commission has occasionally entertained arguments for requiring a utility to update for cost decreases in the past, the Rate Case Plan has never been modified to make this a requirement – even though it has been modified numerous times over several years – and the sheer lack of Commission cases where a utility was *allowed* to update for cost decreases indicates no such requirement at all. Regardless, if the Commission were to update the Rate Case Plan to allow for updates, the water rate case plan above-quoted model³² provides a more reasonable approach that provides fair notice and certainty of the procedures all parties must follow, with a more reasonable definition of materiality taking overall revenue requirement into account, in line with due process. This

³⁰ D.12-08-029; D.12-10-031; D.12-12-019; D.13-02-021.

³¹ See Ex. 246 SCG/Reeves at 23.

³² D.07-05-062, Appx. A at A-9.

contradicts the fundamental tenets of future test year ratemaking, due process and the reasons for a Rate Case Plan and adherence to its targets.

D. The PD Should at a Minimum Eliminate Inconsistencies with the Edison Decision

Applicants' facts and circumstances justify a different result than the one rendered for Edison on the tax issue. However, if the PD's result is adopted, mostly adopting the Edison decision, there are corrections that the Commission should make, at a minimum, to achieve consistency with its Edison decision. Otherwise, there will be three materially different and inconsistent Commission-approved methods for treating the tax repairs deduction among Applicants, Edison, and PG&E. Adoption of Applicants' proposed modifications, as contained in Appendices A and B, in no way constitutes a waiver of Applicants' rights to seek further remedies on these tax issues.

1. The Edison Decision Did Not Adjust for Edison's 2011 Impacts.

The Edison decision stated that, "TURN alleges that SCE's shareholders improperly received the benefit of the increased deductions because SCE allocated the difference between forecast and actual tax paid accrued to SCE's shareholders during the 2011 through 2014 period. . . ." D.15-11-021 at 435. SCE elected to change its accounting method for repairs to adopt the safe harbor guidance of Rev. Proc. 2011-43 on August 24, 2012³³ (less than two weeks before SDG&E made the same election), and as with SDG&E's election, SCE's election was effective for the 2011 tax year.³⁴ Yet, TURN recommended no adjustment to reach back to 2011, and sought only a prospective rate base offset for 2012-2014. *See* D.15-11-021 at 438.

The Commission's own remedy, which did not fully comport with TURN's proposal, likewise did not reach back to 2011. *See Id.* at 455 and 530 (FOF 529). This makes sense because 2011 was two rate case cycles ago for Edison. Similarly for SDG&E, 2011 is part of its 2008 GRC cycle, not 2012 GRC cycle. The PD should not reach back two rate case cycles for SDG&E, as it did not do so in the Edison GRC. Accordingly, if a rate base adjustment is applied to SDG&E, the Commission should remove 2011 from its calculation.

2. Tax memorandum account language should match the Edison outcome.

In Edison's GRC, it was Edison's proposal to create a two-way memorandum account for tax accounting method changes, as an alternative to the PD's approach,³⁵ which the Commission adopted:

³³ A.13-11-003, Ex. 5 TURN/Marcus at 102.

³⁴ *See* D.15-11-021 at 436.

³⁵ A.13-11-003, Southern California Edison Company's (U-338-E) Comments on Proposed Decision on Test Year 2015 General Rate Case for Southern California Edison Company (October 8, 2015) at 22.

Therefore, SCE shall create a two-way Tax Accounting Memorandum Account to track all tax changes during this GRC period. Although we do not adopt specific criteria for when SCE must bring accounting changes to our attention directly (beyond simply recording them in the Tax Accounting Memorandum Account), we wish to send a clear signal to SCE in favor of prompt disclosure. D.15-11-021 at 461. *See also, Id.* at 549 (COL142).

Applicants never requested or endorsed such an approach. Notwithstanding, the PD's language does not match the Edison result, and includes additional arbitrary conditions that are not imposed on Edison:

Along the same line, we expect, and will require, the Applicants to notify the Commission of any tax-related changes, any tax-related accounting changes, or any tax-related procedural changes that materially affect, or may materially affect, revenues, and to establish a memorandum account to track any revenue differences if applicable. Our reference to "materially affect" means a potential increase or decrease of \$3 million or more. PD at 196. *See also, Id.* at 320 (COL 52 and 53).

The PD should not impose additional arbitrary conditions on Applicants. Therefore, the PD should be modified to conform to the Edison decision to avoid inconsistent treatment.

3. The PD's should remove language not contained in the Edison decision.

The PD states,

Similar to what we ordered in SCE's TY 2015 GRC proceeding, SDG&E and SoCalGas shall each establish a two-way tax memorandum account to record any revenue differences resulting from the differences in the income tax expense forecasted in the GRC proceedings of SDG&E and SoCalGas, and the tax expenses incurred by them during the GRC period.. . .

To ensure that the rate base reductions we adopt today do not violate IRS normalization rules, SDG&E and SoCalGas shall submit a private letter ruling to the IRS to request a review that these rate base reductions do not violate the normalization rules. PD at 196, 207. *See also, Id.* at 328 (OP 5).

First, the Edison decision was not as broadly and vaguely worded to order Edison to record revenue differences in income tax expense forecasts. To impose a requirement exclusively on SDG&E and SoCalGas to track any revenue differences resulting from forecasted income tax expense is not only contrary to long-standing Commission precedent regarding forecasted ratemaking, but it is also unnecessary. Of the many items in Applicants' income tax expense, only two items (repairs and bonus depreciation) were contested in this GRC. Second, it was at Edison's request that it be allowed to file a private letter ruling with the IRS, which the Commission granted. The Commission stated,

However, we fully intend that SCE comply with the normalization rules. While we believe we have reached the correct result, and though SCE has not cited to any written determination, case, regulation, or statute to support its position, we recognize that SCE might later obtain a ruling from the IRS. Accordingly, SCE *may* track changes in revenue resulting from the rate base adjustment in the Tax Accounting Memorandum Account adopted in Section 22.6 below. *If SCE decides to*

request an IRS letter ruling, SCE shall file and serve a copy of its request to the IRS D.15-11-021 at 452. (emphasis added)

But Applicants did not make the same request, and frankly didn't address the issue of normalization violation in the same manner as Edison. Further, IRS private letter ruling requests are pursued by taxpayers to resolve an issue impacting a proposed tax position on their tax returns. The Commission should not direct a utility taxpayer to make a discretionary filing or request with a federal agency. The Commission should at a minimum conform to the Edison decision, and give Applicants the option to seek a private letter ruling instead of directing them to do so. This is consistent with the Commission's approach in Applicants' 2012 GRC, where the Commission allowed for, but did not require, both utilities to seek an IRS ruling to supporting their tax position.³⁶ In addition, consistent with the Edison decision, the Commission should follow the same process and timeline for Commission review of the ruling request as stated in the Edison decision, and should affirmatively state that if SDG&E or SoCalGas "receives a relevant IRS ruling contradicting this decision, then it shall comply with the IRS's interpretation of the applicable tax laws by filing a Tier 2 advice letter with this Commission to seek an appropriate adjustment to its revenue requirement and/or rate base." *Id.*

E. Correction of the PD's Tax Calculation Errors

Applicants have identified material errors in the tax calculations accompanying the PD's Appendix B workpapers. In summary, the PD improperly double-counts its 2015 adjustment by requiring a flow through of the recorded tax benefits contained in SDG&E's and SoCalGas' current tax repairs deduction memorandum accounts for 2015, while also reflecting the impact of the foregone depreciation on 2015-vintage assets in reducing their respective rate base for 2015. A utility may take either a repairs deduction or a depreciation deduction on a repairs-eligible asset, but not both, as the Appendix B workpapers erroneously have done. TURN recognized in its testimony and accompanying exhibits that if the 2015 repairs benefits were flowed through to ratepayers through the memorandum account mechanism, its proposed adjustments to rate base must be adjusted to exclude the impact of 2015-vintage assets.³⁷ Second, the PD should be revised to make clear that the rate base adjustments are not in perpetuity, but decrease over time and are fully amortized by the end of the relevant amortization period (through 2038 for SoCalGas and 2042 for SDG&E). The same issue was noted by Edison in its

³⁶ See D.13-05-010 at 952-953: "To the extent applicable, SDG&E and SoCalGas may file Tier 1 advice letters to create memorandum accounts to track any NOL that may arise due to bonus depreciation, and either utility may file a Tier 2 advice letter seeking an adjustment to its revenue requirement if an IRS ruling supporting such an adjustment is obtained."

³⁷ See Table 10 of Ex. 400 TURN/Marcus at 27.

opening comments to their PD.³⁸ This clarification is needed to avoid contradicting the PD's calculations in Appendix B, which clearly reflect the amortization of the rate base adjustments each year beginning in 2017. Third, the Results of Operations model should be adjusted to reflect the impact on the tax basis of assets resulting from flowing through the repairs deduction to ratepayers for 2015 under the memorandum account mechanism. Applicants' detailed review of the PD's tax workpapers are attached to these comments as Appendix C.

F. Conclusion – Tax Repair Issue

Applicants attach specific proposed modifications to the PD in accordance with these comments on the PD's treatment of the tax repairs deduction issue. In summary, the PD should be modified to: (1) correct the PD to acknowledge and apply the law on retroactive ratemaking, removing the rate base reduction and the discussion regarding Rule 1 and distinguishing Applicants' factual circumstances according to the record in this case and in the GRC 2012 case; (2) limit the imposed remedy on SDG&E to tax impacts on the 2012 GRC cycle, which excludes 2011; (3) conform to the Edison decision's language and requirements for the 2016 GRC cycle tax accounting memorandum account; (4) conform to the Edison decision's language such that Applicants are allowed, but not ordered to seek a private letter ruling from the IRS regarding a determination on normalization violation; and (5) correct calculation errors in its Appendix B workpapers and RO model inputs.

III. THE PD ERRS IN ACCEPTING INCORRECT EXTRA-RECORD ARGUMENTS, CONTRARY TO DUE PROCESS, SAFETY POLICY AND SETTLEMENT POLICY.

The Commission should adopt the PD's recommendation agreeing with settled ICP amounts of \$32 million and \$25 million for SDG&E and SoCalGas, respectively, and disregard untimely raised issues that were and not properly litigated in accordance with due process and that otherwise do not comport with the law and Commission policy. The PD errs by incorrectly adopting MGRA's extra-record briefing speculation reading improper motive into an earnings adjustment provision of SDG&E's ICP plans allowing board³⁹ discretion to include up to 10% of the earnings impact of wildfire litigation for ICP purposes. The PD must be corrected to reject MGRA's incorrect, misguided, and untimely

³⁸ A.13-11-003, Southern California Edison Company's (U-338-E) Comments on Proposed Decision on Test Year 2015 General Rate Case for Southern California Edison Company (October 8, 2015) at 21.

³⁹ Sempra Energy is the parent company of SDG&E and SoCalGas. Both SDG&E and SoCalGas are independent regulated utilities that are Applicants to this proceeding. Sempra Energy is not a party to this proceeding. All three companies follow corporate formalities, and Sempra Energy, SDG&E and SoCalGas have their own board of directors. To the extent that the PD renders findings, orders or directives, it should do so only to the utility applicants, and not to the parent company that is not a party to this proceeding. (See, e.g., pp. 154-157.) Any orders or directives to Sempra Energy should be removed.

claims. The PD similarly errs by including conclusions based outside the record with respect to the gas leak at Aliso Canyon. The PD's entire discussion regarding ICP is based on factual and legal errors, is not on the record, and should be stricken from the PD, as shown in Appendix A.

A. The PD is factually wrong and not based on the record.

There is zero support for the PD's claim that the ICP provision at issue "creates the perverse incentive of minimizing safety-focused incentives while benefitting employees and management by shifting the costs of unsafe incidents onto ratepayers and being rewarded for doing so" (PD at 316 (COL 24)). The Commission has no record on this issue, because MGRA untimely raised it after hearings had finished and settlement motions filed, after any opportunity to present evidence. If there had been a record, it would have shown that there is no windfall or "reward" at issue here.

Instead of discouraging safety through the ICP, as the PD wrongly infers, the provision actually recalibrates the focus on safety and mutes any potential for anomalous focus on earnings. The 2007 wildfire litigation costs are what they are – a reality that has the potential to cause an unusual impact on net earnings in a given year and, therefore, the ICP, regardless of whether SDG&E seeks cost recovery in rates. If there were no provision at all to account for the possibility that the Commission may ultimately deny SDG&E recovery of the wildfire costs, the earnings impact to ICP in a given year could completely overwhelm operational goals, such as safety. This earnings impact would send a distorted signal to employees regarding operational goals in the year the loss occurs, which by now would be several years after the fires actually occurred. Thus, the provision aligns performance during the ICP period, which allows for more focus on ICP goals related to current operational safety, rather than less.

The PD is factually wrong to suggest that the provision creates an ICP goal, and it does not "have the effect of increasing revenues or decreasing expenses for Sempra if SDG&E is successful in recovering the uninsured costs of wildfires from ratepayers,"⁴⁰ as the PD claims. The provision defines of what is planned to be included in earnings for ICP purposes and has no impact on Sempra or SDG&E earnings. It merely recognizes the possibility that external events that happened long before the ICP year, and outside of employees' decision-making control (because the decision being made is in the CPUC's hands) may have a significant impact on the earnings portion of ICP in a given year. The provision protects employees from the impact of an anomalous event that bears no relation to

⁴⁰ PD at 147.

incentivized performance in that given year.⁴¹ This allows for ICP focus on what employees can work to control, such as safety, reliability, and customer service; and temporal alignment between performance and pay.

There is no legal or factual basis for MGRA's assertion that SDG&E is at fault regarding any of the wildfire costs at issue in A.15-09-010, and the PD is incorrect to adopt that contention as a basis for its conclusions (*see, e.g.*, PD at 296 (FOF 89)). Any issues related to those costs have not yet been decided by the Commission. By even raising the issue of safety in the context of the 2007 wildfire costs, the PD is implicitly adopting MGRA's misguided argument that SDG&E was at fault for the Witch, Rice and Guejito fires. But this is simply a prejudgment of issues that are now pending before the Commission, contrary to due process. The PD states that it is not prejudging the outcome of that proceeding, but that is precisely what the PD does by adopting MGRA's arguments. The PD can point to no adverse findings by the Commission regarding SDG&E's safety decision-making or operations associated with the 2007 wildfire costs.⁴² MGRA's tardy assertion cannot possibly form the legal and factual basis for any of the PD's conclusions.

For SoCalGas, the PD suffers from the same legal deficiencies – no record evidence, and no due process. As the PD recognizes, the leak happened after the record was closed and after the settlement was filed. Yet the PD devotes several pages to statements about the leak that are not in the record. The PD properly recognizes that the root cause analysis has not been conducted, and because that is the case, that it is premature to make findings about the cause. Yet the PD states that SoCalGas must consider an ICP offset for the problems incurred as a result of the leak, because to do otherwise would reward employees and executives for unsafe incidents that “resulted because of the utilities’ prior actions.” (p.150) It similarly orders that SoCalGas should exercise its rights to “withhold, deny, or claw back compensation” related to management and oversight of Aliso Canyon. (pp. 154-155). The PD cannot

⁴¹ The limited record evidence on this adjustment clause – which MGRA did not notice until months after evidentiary hearings – demonstrates that this ICP adjustment excludes 90% of any wildfire litigation effect on earnings from the ICP calculation and mutes its impact. *See* Ex. 403 TURN/Sugar, *passim*. Thus, absent this wildfire litigation cost adjustment, the negative impact of wildfire litigation on an employee's ICP calculation could potentially be much more significant. *See* Ex. 200 Schlax at 8 (“[T]he inclusion of 10% of the earnings impact in the determination of the ICP financial results actually reduces the amount of compensation awarded.”).

⁴² The Commission's investigation into whether SDG&E violated any General Order requirements in connection with the utility facilities linked to the ignition of the Witch, Rice and Guejito Fires of 2007 resulted in a settlement agreement that the Commission approved as in the public interest. (D.10-04-047 at COL 1-3.) In that settlement agreement, SDG&E did not admit any violations of the safety General Order provisions or related statutory requirements. (*Id.* at 5.) Further, the FERC has found that the actions and decisions leading to the incurrence of the federal-jurisdictional portion of the 2007 wildfire costs were reasonable and prudent, and it has permitted their recovery in FERC rates. *San Diego Gas & Elec. Co.*, 146 FERC ¶ 63,017 at PP 55-62 (2014).

prejudge these issues with no record facts and base orders on its conclusions while concurrently admitting that the root cause of what caused the Aliso Canyon incident has not been determined.

Although the root cause of the incident is still being determined, what is known is how the SoCalGas employees responded to the leak. During almost four months of employees, contractors and numerous agencies at a geographically limited worksite working literally day and night, SoCalGas did not experience a single safety issue while the leak was active. Yet the PD makes no mention of this fact. The PD's entire discussion regarding Aliso Canyon (7.4.2) should be stricken. (PD at 240-51; 309 (FOF 192, 193).) Issues that are not being litigated here have no place in the Commission's final decision.

Finally, the PD is factually wrong that A.15-09-010 represents the "aggressive[] pursu[it]" of "the costs of unsafe incidents." These characterizations support a poor and mistaken impression of the regulatory process that is not only inconsistent with the record, it is inconsistent with law. Due process requires that good faith should be presumed on Applicants' part, in the absence of contrary evidence.⁴³ In validating MGRA's assumptions, the PD essentially misstates the legal rights and duties of both the utilities and the Commission, and ignores the fact that Applicants have the right (and often the duty) to petition the Commission for cost recovery, the right (and duty) to zealously advocate their positions, and the right to a full and fair consideration of any issues before the Commission, under the First and Fifth Amendment. The PD's suggestion that any application to recover costs is, by its very nature, "perversely" motivated ignores these legal rights and duties, and creates the appearance of prejudging the application – despite all of the PD's protests to the contrary.

B. The PD's Errors Lead to Unintended Consequences, Contrary to Commission Policies and Longstanding Constitutional Law.

The PD may *intend* to promote safety policy, but the practical effect of what the PD *actually* orders requires utility action or *inaction* that would be contrary to the Commission's policies on safety and longstanding regulatory law, as well as the factual record in this case. Rather than aligning safety goals and ICP, the PD actually prevents SDG&E and SoCalGas from using ICP as a means to incent the proper employee behavior to drive safety, if related to an "unsafe incident" (PD at 150), and it would specifically prevent ICP related to "operations at its gas storage facilities or at the Aliso Canyon storage facility ..." (PD at 150-51). This has the unintended effect of removing utility management's ability to address safety issues via ICP incentives as they arise. Applicants have demonstrated their focus on safe operations throughout testimony in this proceeding – including testimony regarding ICP operational

⁴³ See *West Ohio Gas Co. v. PUC*, 294 U.S. 63, 72 (1935) ("Good faith is to be presumed on the part of the managers of a business.").

goals. When safety issues arise, it is important that management retain flexibility, in order to strengthen focus on specific areas of operational safety. The PD would take away management flexibility to timely address what it deems to be “unsafe incidents” through ICP – contrary to the Commission’s policies on safety, and presumably contrary to the PD’s intent. Therein lies the true danger of the PD’s conclusions – the PD removes management’s ability to timely react and align goals, performance, and ICP.

The negative consequences of the PD’s ICP rulings demonstrate why the CPUC’s longstanding restraint from “micromanaging” the utilities it regulates,⁴⁴ particularly with respect to incentive compensation, is good policy – and it is also rooted in longstanding constitutional law. Interpreting due process in utility regulation, the U.S. Supreme Court has stated that the role of the regulator is not to substitute its own judgment for that of a “board of directors [exercising] proper discretion about [a] matter requiring business judgment”:

It must never be forgotten that, while the state may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership. ... “The commission is not the financial manager of the corporation and it is not empowered to substitute its judgment for that of the directors of the corporation”⁴⁵

This same sound logic and legal reasoning was correctly reflected in the Commission’s prior decision regarding Applicants’ ICP metrics:

SDG&E and SoCalGas are in the best position to decide what metrics to use to measure the performance of its employees, and to revise the metrics as UCAN has suggested would result in the micromanagement of the variable compensation such as ICP.⁴⁶

There is neither record evidence nor any change in law that would justify a different result here, as the PD recommends in error.⁴⁷

⁴⁴ See, e.g., D.06-05-016 at 336 (“In general we do not micromanage the utility’s operations.”).

⁴⁵ *Missouri ex rel. Southwestern Bell Tel. Co. v. Public Service Comm’n*, 262 U.S. 276, 288-89 (1923) (internal citations omitted).

⁴⁶ D.13-05-010 at 1079, Finding of Fact 380; *id.* at 881-82. See also D.04-07-022 at 298-299 (“In D.92-12-057, the Commission noted the following conclusions of a workshop conducted by the Commission staff: ‘The consensus reached in the workshop was that the Commission should not attempt to micromanage utility incentive compensation programs.’”); D.96-04-050, 1996 Cal. PUC LEXIS 270 at *206-208.

⁴⁷ The PD appears to suggest that recently enacted P. U. Code § 706 may expand the Commission’s role in “reviewing” compensation. However, § 706 only provides for Commission review of the ratepayer impacts of a utility executive’s compensation under a very specific set of defined, unusual circumstances: specifically, where (1) “excess” compensation (compensation over \$1 million), (2) is paid to a utility executive, (3) and funded by ratepayers; and where (4) a federal or state safety statute has been found to have been violated, (5) and “as a proximate cause of that violation, ratepayers incur a financial responsibility in excess of five million dollars (\$5,000,000).” P. U. Code § 706, *passim*. Moreover, § 706 should not be read to conflict with due process and Supreme Court guidance that regulators refrain from second-guessing utility management decisions, particularly

C. The PD Errs in Accepting MGRA's Untimely Arguments with no Record Basis, Contrary to Due Process of Law and Commission Policy.

The PD's misguided rulings on ICP also demonstrate why the procedural due process errors that form the basis for the PD's discussion and findings of fact on this issue are not mere technical errors, without dangerous consequence. Although MGRA had the same opportunity as any other party to timely raise its speculative claim in accordance with the Scoping Ruling's schedule,⁴⁸ MGRA did not, until long after testimony had been served, evidentiary hearings concluded, and settlement motions filed. Thus, there is no evidentiary record testing the PD's ultimate findings and conclusions on any of its ICP discussion, as there must be.⁴⁹ The Settling Parties comprise the only parties that timely raised and litigated ICP-related issues during the pendency of this proceeding. The Settlement Agreements reflect the intersection of policy and the record, resolving all contested ICP issues between the Settling Parties for purposes of this proceeding,⁵⁰ and thus also resolving all record ICP issues properly litigated and on the record for review by the Commission – including all issues timely raised regarding the adjustment provision at issue. It is in the interest of public policy to support settlements, and it is contrary to Commission policy promoting settlement to allow a latecomer party to untimely raise new policy issues after evidence has been taken and settlement motions filed.

Although the Settlement Agreements do not resolve ICP policy issues, it is neither fair nor accurate for the PD to suggest that the agreements do not reflect a balancing of all litigated views and concerns between the Settling Parties, including policy concerns, for purposes of this case. The Settlement Agreements “were reached after consideration of all positions advanced in all the testimony ...”⁵¹ and represent “a complete and final resolution of all issues among them in this proceeding”⁵² It

where no bad faith is indicated and discretionary business judgment is required. *See Missouri ex rel. Southwestern Bell Tel. Co.*, 262 U.S. at 288-89.

⁴⁸ The ICP provision to which MGRA took issue was readily available and properly in the evidentiary record months before MGRA discovered it. The ICP provision at issue was included in an attachment to the testimony of TURN witness John Sugar, served to MGRA and all parties on May 15, 2015, and entered into the evidentiary record on July 15, 2015 (Ex. 403 TURN/Sugar). The February 5, 2016 Scoping Ruling (at 10) provided all parties, including MGRA, with opportunity to respond in rebuttal testimony on June 12, 2015, and the opportunity to cross-examine Mr. Sugar or any of Applicants' witnesses (e.g., Ms. Debbie Robinson or Mr. Bob Schlax); but MGRA neither presented their theories in rebuttal testimony nor appeared at hearings. Thus the post-hearing discovery described in PD FOFs 86-89 did not uncover new evidence or raise new issues.

⁴⁹ *See*, TURN v. CPUC [Oakley], 223 Cal.App.4th 945 (2014) (annulling a Commission decision not supported by reliable evidence and holding that the Commission's findings did not support its decision).

⁵⁰ *See* September 11, 2015 Joint Motions for Settlement at 5 (“Settling Parties are agreeing to resolve, without prejudice, all contested issues such that there remain no outstanding issues to litigate amongst Settling Parties in this GRC proceeding, with the exception ... of a tax issue raised by TURN....”).

⁵¹ SoCalGas Settlement Agreement at 2; SDG&E Settlement Agreement at 2.

is bad policy and contrary to the record in this proceeding to suggest that litigated policy issues were not considered by the Settling Parties in shaping the compromise that the agreements represent. And it is certainly unfair to use Settlement Agreement language against the Settling Parties to imbue hindsight meaning regarding policy issues that were not raised in litigation and did not exist at the time the agreements were signed.⁵³ It turns the factual world upside down. No Settlement Agreement language can be interpreted to signify that MGRA's and the PD's post-record policy issues were "live" at the time of signing. They were not live; they did not yet exist; and the underlying premises are just flatly incorrect.

The hasty, post-hearing process that formed the PD's entire discussion on ICP is not consistent with the Commission's duty to "proceed in a manner required by law"⁵⁴ and due process, which led to the PD's error.⁵⁵ And the result of the haphazard and untimely process by which MGRA's arguments came before the Commission would, if not corrected, create bad legal precedent and bad policy, and inhibit management's ability to timely incent the proper employee behavior to drive safety.

D. Applicants have a strong record on safety in this proceeding.

Applicants' reply brief (at 5-10) details the extensive testimony presented in their direct case in this proceeding regarding their longstanding commitment to a well-developed safety culture, philosophy and practices; operational commitment to risk management through targeted programs and initiatives; and commitment to the continued growth and development of our existing risk management processes into a more fully integrated enterprise risk management governance structure. To that end, much of the safety information the PD requests (PD at 155-57) is either already found in Applicants' testimony,

⁵² Settlement Motions at 2.

⁵³ See, e.g., PD at 295 (FOF 84 and 85).

⁵⁴ *Southern Cal. Edison Co. v. PUC*, 140 Cal.App.4th 1085, 1106 (2006) (annulling the Commission's decision where it failed to proceed in the manner required by law, in departing from the scoping memo and violating its own regulations) (cited by *The Utility Reform Network v. PUC*, 2012 Cal. App. Unpub. LEXIS 2049 (March 16, 2012) (setting aside Commission approval where the scope of the case was expanded beyond the scoping memo, failed to follow its own rules, and thereby prejudiced the parties)); see also, *Env't'l Protection Info. Ctr, Inc. v. Johnson*, 170 Cal.App.3d 604, 622-623(1985) (failure to follow regulations prejudices public process).

⁵⁵ Applicants timely raised their due process objections to MGRA's extra-record allegations on October 21, 2015, in a Motion to Strike, incorporated herein by reference, which more fully sets forth the procedural infirmities related to MGRA's untimely briefing claims (serving as improper testimony). Applicants also reiterate and incorporate by reference Applicants' comments objecting to the September 21, 2015, ACR, filed jointly on October 9, 2015 with ORA, UCAN, Joint Minority Parties, EDF, and FEA; and Applicants' October 16, 2015 Reply Comments objecting to the ACR. The corrections noted in Appendices A and B would eliminate the PD's improperly considered (and wrongly decided) ICP issues.

provided through ORA audit and Master Data Request responses, or is otherwise publicly available.⁵⁶ Putting this information in future testimony would do nothing to help the Commission assess whether Applicants are entitled to recover ICP costs. Moreover, the Commission has tools available to address any safety violations by the utilities, such as fines. And the Settlement Agreements provide that will pay for only 64% of the target ICP at SDG&E and about 51% of the target ICP at SoCalGas, as well as 0% of Applicants' Long Term Incentive program. Historically, the Commission has prudently refrained from micromanaging the Applicants' ICP policies. There is no record basis or applicable change in law for the Commission to change its policy here. Applicants agree that Commission has the authority to intervene if a utility had a plan that affirmatively rewarded employees when they violate the law. There is no record evidence that this is the case with the ICP programs at issue here. For all of the reasons noted above, the Commission should tread carefully in adopting new ICP policies and procedures, particularly with respect to safety issues, in order to avoid similar unintended results as are evident in the PD. Applicants are mindful that the Commission is proceeding carefully and thoughtfully in implementing new processes and procedures through its S-MAP and RAMP proceedings, and urge the Commission to do the same here.

IV. THE PD SHOULD ADOPT SETTLED BONUS DEPRECIATION AMOUNTS OR TREAT CONSISTENTLY WITH PG&E'S 2011 GRC.

Applicants urge the Commission to adopt the Settlement Agreements in their entirety, as set forth in the concurrently filed joint comments. Alternatively, the Commission should consider treating this situation in the same manner it handled PG&E's TY 2011 GRC. In that proceeding, as shown in the following timeline, the Commission did not alter PG&E's proposed settlement to account for a new bonus depreciation law. Rather, PG&E was ordered to establish a memorandum account that would track the impact of the new bonus depreciation law and allowed PG&E the opportunity to use those benefits for qualified infrastructure projects.

- **October 15, 2010** – PG&E executed a settlement agreement with 16 parties establishing revenue requirements for 2011-2013.
- **December 17, 2010** – President Obama signed the Tax Relief Act providing for 100% bonus depreciation on certain business property put in service 9/8/10 through 1/1/12 and 50% bonus depreciation on certain business property put in service 1/1/12 through 1/1/13.

⁵⁶ See, e.g., Security and Exchange Commission filings publicly available at:
<http://investor.shareholder.com/sre/secfiling.cfm?filingID=1193125-16-550655&CIK=92108>;
<http://investor.shareholder.com/sre/secfiling.cfm?filingID=1193125-16-517221&CIK=1032208>.

- **April 14, 2011** – CPUC Resolution L-411 directed PG&E and other utilities (Sempra utilities and Edison excluded) to establish a memorandum account to track the revenue requirement impacts from the Tax Relief Act not otherwise reflected in rates until the next General Rate Case. Sempra utilities were excluded as they were facing a 2012 GRC upon which the new tax law would be addressed.⁵⁷
- **May 5, 2011** – CPUC Final Decision (D.11-05-018) PG&E TY 2011 GRC.

The foregoing facts are closely aligned with those in this case, in that the SDG&E and SCG TY 2016 Settlement Agreements were reached prior to the enactment of a bonus depreciation tax law change, but before a final GRC decision was issued. Moreover, the purpose of Resolution L-411 is aligned with the policy supporting settlements as a whole (i.e., respecting the total settled revenue requirement) while at the same time imposing a reasonable control (i.e., a memorandum account) to ensure that the positive impact of bonus depreciation is directed toward capital projects that will benefit ratepayers. Resolution L-411's summary reflects this purpose:

More specifically, the memorandum account established by this resolution will track on a CPUC-jurisdictional, revenue requirement basis: (a) decreases in each impacted utility's revenue requirement resulting from increases in its deferred tax reserve; and (b) other direct changes in revenue requirement resulting from taking advantage of the New Tax Law. This resolution also authorizes impacted utilities to use savings from this new tax law to invest in additional, needed utility infrastructure, not otherwise funded in rates, within a time frame shorter than would be practicable through the formal application or advice letter process. The establishment of a memorandum account does not change rates, nor guarantee that rates will be changed in the future. This mechanism simply allows the Commission to determine at a future date whether rates should be changed, without having to be concerned with issues of retroactive ratemaking.⁵⁸

In light of purpose of Resolution L-411, SDG&E and SCG suggest that they are entitled to the same treatment afforded to PG&E. That is, if the Commission determines that its final decision must address the impact of the recent federal tax law changes related to bonus depreciation, then SDG&E and SCG should be ordered to establish the same type of memorandum account described in Resolution L-411 (as revised in Resolution L-411A) as a means to track the impact of bonus depreciation in 2016-2018 at both SDG&E and SCG, while leaving the settled revenue requirement unchanged. Should the Commission determine in the next GRC that SDG&E and SCG failed to use actual savings from bonus depreciation on needed utility infrastructure, then those dollars would be returned to ratepayers in the next GRC, without violating the rules against retroactive ratemaking.

⁵⁷ Note that on June 23, 2011, Revised Resolution L-411A was issued to cure internal inconsistencies and other similar errors in the original resolution.

⁵⁸ Resolution L-411 at 1-2.

V. MISCELLANEOUS MODIFICATIONS

Post-Test Year Settlement Agreement: The PD should be modified to adopt Applicants' Post-Test Year Settlement Agreement with ORA, as set forth in ORA's concurrently filed comments.

PBR Clarification: The PD identifies four performance indices to be utilized in SDG&E's electric reliability performance indicator, but does not clarify the benchmarks, deadbands, and incentive amounts for implementation, as described in Ex. 72 at p. JTW-83 lines 12-17 and reiterated in Ex. 240 at p. MW-4 lines 12-15. SDG&E's testimony is based on D.14-09-005 (which contains specific information, as well as references to other regulatory submittals' information, such as SDG&E's AL 2518-E and D.13-05-010). The PD should include the specifications and benchmarks for 2016-2019.⁵⁹

RO Model Update: SDG&E requests to update its RO Model to reflect its 20% share of SONGS-related marine mitigation costs and escalation authorized by the CPUC in SCE's 2015 GRC (D.15-11-021). In an effort to accurately reflect known changes to the revenue requirement, SDG&E requests that the changes be reflected in the RO model supporting the final decision. Please see Appendix D for a summary of the Marine Mitigation O&M and capital adjustments in the RO Model.

OP Modifications: Applicants request modification to Ordering Paragraph (OP) 1(d)(i) to allow for a 17-month amortization period instead of 12-month, which results in the roll-off of these balances to occur on January 1, 2018, with Applicants' consolidated rate change. This modification would avoid another rate change on August 1, 2017 to roll off these balances, which creates greater rate stability. OP 4 should also be modified for accuracy by indicating that the tax memorandum account should track (not record) any revenue differences. Both modifications are proposed in Appendix B.

Respectfully submitted,

**SAN DIEGO GAS & ELECTRIC COMPANY
SOUTHERN CALIFORNIA GAS COMPANY**

By: /s/ Laura M. Earl

Laura M. Earl

June 8, 2016

⁵⁹ The year 2019 reliability incentive data should be adopted regardless of whether or not the PD approves a four year cycle. Due to the time it takes to process SDG&E's GRC, having targets and metrics for 2019 will permit the mechanisms to stay effective during 2019, whether that year is the Test Year for SDG&E's next GRC cycle, or the final attrition year in the current GRC cycle.

APPENDIX A

PROPOSED MODIFICATIONS TO THE FINDINGS OF FACT AND CONCLUSIONS OF LAW

Proposed Revisions To Findings Of Fact (FF)

- FF 83. Incentive compensation costs, which include variable pay, are included as in part of in A&G costs for both SDG&E and SoCalGas but also apply to other areas that include labor costs.
- FF 84. As discussed in the Incentive Compensation Section, the agreed upon amount for
~~The stipulation in the SDG&E Settlement Comparison Exhibit to a compromise-~~
~~forecast of \$32 million for SDG&E's variable compensation is reasonable~~does-
~~not resolve any policy issues regarding variable compensation.~~
- FF 85. As discussed in the Incentive Compensation Section, the agreed upon amount
~~The stipulation in the SoCalGas Settlement Comparison Exhibit to a-~~
~~compromise forecast of \$25 million for SoCalGas' variable compensation is~~
reasonable~~does not resolve any policy issues regarding variable compensation.~~
- FF 86. ~~On July 20, 2015, the Energy Division staff issued data requests to SDG&E and SoCalGas for information about its "at risk" compensation, and how that compensation may be related to safety metrics.~~
- FF 87. ~~The data responses of SDG&E and SoCalGas to the July 20, 2015 data requests were admitted into evidence as Exhibit 415 by the May 9, 2016 ruling of the ALJs.~~
- FF 88. ~~The July 20, 2015 data requests regarding compensation raise the issue of how safety-related factors are considered in determining the award of variable compensation to non-represented employees and executives of SDG&E and SoCalGas, and the responses of SDG&E and SoCalGas in turn raise the related issue of whether the variable compensation formula adequately promotes a safety culture, or unduly benefits shareholders with the simple metric of the companies' financial performance and earnings, and whether that creates a situation where the two interests are conflicting.~~
- FF 89. ~~In MGRA's response to the September 21, 2015 ruling, it objected to a provision in SDG&E's ICP which allows the Compensation Committee of Sempra's Board to exercise its discretion in including up to 10% of the earnings impact of the wildfire litigation for ICP purposes, which MGRA contends is contrary to ratepayer interests because it rewards SDG&E's employees for seeking to have ratepayers pay for the wildfire costs even though SDG&E was at fault.~~

~~FF 90. This decision does not prejudge or address the merits of the issues being litigated in A.15-09-010.~~

~~FF 91. Since this GRC is examining the costs associated with compensating SDG&E's employees over the TY 2016 GRC cycle, it is appropriate to review how non-represented employees and executives at both SDG&E and SoCalGas are compensated under variable compensation.~~

FF 96. As discussed in the section on FERC transmission costs, the amount of ~~\$55.666~~ 55.593 million to be excluded as ~~agreed to in the SDG&E Attachment 1 Settlement Agreement~~ is reasonable.

FF 98. As discussed in the section on Uncollectibles, it is reasonable to use the uncollectibles formula embedded in the RO model which results in an uncollectibles amount of ~~\$3.114~~ 3.077 million.

FF 99. As discussed in the section on franchise fees, it is reasonable to use the franchise fee factors embedded in the RO model which results in a total franchise fees amount of ~~\$57.215~~ 56.531 million.

FF 120. We are persuaded by TURN's logic, that over the long term, ratepayers for both SDG&E and SoCalGas will end up paying higher rates than they would have had the Applicants not implemented the change to their accounting method until 2016.

FF 123. D.13-05-010, which addressed Applicants' TY 2012 GRC applications, was not adopted by the Commission until May 9, 2013, and there were opportunities for the Applicants to bring the change in accounting method to the attention of the Commission and the parties before then, even though Applicants were not required to do so under the Commission's then-operative procedural rules.

FF 126. The income tax expense presented in the Applicants' TY 2012 GRC applications did not include the tax repairs accounting method change that was later claimed on SDG&E's 2011 tax return and on SoCalGas' 2012 tax return, and thus , ~~and the failure of the Applicants to disclose these changes to the Commission's attention before D.13-05-010 was issued,~~ did not provide the Commission with ~~an accurate~~ a revised forecast of the deductions for repairs that would be taken over the course of the 2012 to 2015 GRC cycle.

FF. 129. The ~~permanent~~ rate base reductions that are adopted today are based on the net

present value of the future excess costs to ratepayers resulting from the Applicants' tax treatment for the repairs deductions from ~~2011~~ 2012-2015 2014, compared to the cost if no change in the repairs deduction was made until 2016.

FF 130. The rate base reductions, as calculated by the RO model, have the effect of reducing SDG&E's revenue requirement for TY 2016 by ~~\$9.404~~ \$3.954 million (~~\$1.624 million for gas, and \$7.780 million for electric~~), and by ~~\$7.447~~ \$2.656 million for SoCalGas.

~~FF 139. An adjustment should be made for bonus depreciation because the TY 2016 GRC applications of the Applicants only reflect bonus depreciation as a result of ATRA (tax year 2013) and TIPA (tax year 2014), but does not reflect bonus depreciation as a result of the PATH, which extended bonus depreciation for 2015 and through the TY 2016 GRC cycle.~~

~~FF 140. If the bonus depreciation from PATH is not reflected during the TY 2016 GRC cycle for SDG&E and SoCalGas, their revenue requirements are likely to be higher and their ratepayers will pay higher rates as a result.~~

~~FF 141. Due to the PATH, the Applicants can take advantage of the bonus depreciation for tax years 2015 through 2018, and the additional depreciation that can be claimed is likely to have a material effect on the depreciation that can be claimed.~~

~~FF 142. If the effects of the PATH are not reflected in the TY 2016 GRC cycle, the ADIT for TY 2016 will be lower, which will increase the amount of rate base, which in turn will result in an increase of the Applicants' return on rate base.~~

~~FF 143. Including an adjustment to bonus depreciation for 2015 and 2016 will result in a reduction of \$9.390 (s/b 10.735) million to the revenue requirement of SDG&E, and a reduction of \$12.784 million to the revenue requirement of SoCalGas.~~

FF 157. As discussed in the section on miscellaneous revenues, the amount of ~~\$20.061~~ 20.057 million is reasonable.

FF 213. As discussed in the SoCalGas section on administrative and general, the O&M costs of ~~\$377.270~~ 377.267 million is reasonable.

FF 220. As discussed in the SoCalGas section on franchise fees, the use of the embedded franchise fee factor in the RO model, which results in ~~\$30.352~~ 30.075 million, is reasonable.

FF 224. As discussed in the SoCalGas section on taxes other than on income, the methodology agreed to by the settling parties, and which generated the amount of ~~\$95.433~~ 94.948 million, is reasonable.

- FF 227. Using the agreed upon rate base amount of ~~\$4,137,633,000~~ 3,974,851,000 and rate of return of 8.02%, results in the TY 2016 return on rate base amount of ~~\$331.838~~ 318.783 million.
- FF 228. As discussed in the SoCalGas section on miscellaneous revenues, the amount of ~~\$99.280~~ 98.685 million is reasonable.

Proposed Revisions To Conclusions Of Law (CL)

- CL 37. For the reasons stated in today's decision, ~~a permanent~~ an adjustment to the rate base of SoCalGas and SDG&E is warranted due to the change in accounting method for the repairs deduction.
- ~~CL 39. One could argue that the Applicants' failure to bring these material differences to the attention of the Commission should be considered a violation of Rule 1 of the Commission's Rules of Practice and Procedure.~~
- ~~CL 42. To allow this material change to escape the Commission's review merely because of the Applicants' timing of the tax change, and the Applicants' failure to bring this material change to the attention of the Commission, would be unjust and unreasonable under the circumstances.~~
- CL 52: The Applicants shall be directed to notify the Commission of any tax-related changes, any tax-related accounting changes, or any tax-related procedural changes that materially affect, or may materially affect, revenues and establish a memorandum account to track any revenue differences if applicable. Applicants should create a two-way Tax Accounting Memorandum Account to track all tax changes during this GRC period, in a manner consistent with our decision in Southern California Edison Company's 2015 GRC, as reflected in D.15-11-021, Conclusion of Law 142.
- ~~CL 53. "Materially affect" means \$3 million or more.~~
- ~~CL 54. Since the Attachment 1 Settlement Agreement for both SDG&E and SoCalGas does not address the extension of bonus depreciation, that provision of the SDG&E settlement and the SoCalGas settlement is unreasonable and not in the public interest because of the Applicants' ability to use bonus depreciation for the tax years of 2015 through 2018, and that portion of the settlement agreement should be rejected.~~
- ~~CL 56. To ignore the effects of the PATH, when the Applicants have applied bonus depreciation for 2015, and presumably will do so for tax year 2016, would be unreasonable and not in the public interest because of the effect on the revenue requirements and the rates that ratepayers will have to pay.~~
- ~~CL 57. The Commission should adopt an adjustment to the TY 2016 revenue requirements of SDG&E and SoCalGas that reflects the inclusion of bonus depreciation for tax years 2015 and 2016.~~

~~CL 58. An adjustment to the TY 2016 revenue requirements of SDG&E and SoCalGas for bonus depreciation is consistent with the Rate Case Plan in which known changes in the tax laws should be reflected, and the Commission should exercise its discretion to take into account the change in the tax law.~~

APPENDIX B
PROPOSED MODIFICATIONS TO THE ORDERING PARAGRAPHS
AND MISCELLANEOUS CORRECTIONS

Proposed Revisions To Ordering Paragraphs (OP)

OP 1. The September 11, 2015 “Joint Motion For Adoption of Settlement Agreements Regarding San Diego Gas & Electric Company’s Test Year 2016 General Rate Case, Including Attrition Years 2017 and 2018” (SDG&E Settlement Motion) is granted, and except for the three adjustments to the Test Year 2016 revenue requirement for San Diego Gas & Electric Company (SDG&E) as noted below, the five settlement agreements attached to the SDG&E Settlement Motion, are adopted.

- a. ~~In the Attachment 1 settlement agreement to the SDG&E Settlement Motion, the provision regarding bonus depreciation is not adopted, and an adjustment is made to the adopted revenue requirement for bonus depreciation.~~
- e. Within 15 days from the effective date of this Order, SDG&E shall file a Tier 1 Advice Letter, with revised tariff sheets, to implement the Test Year 2016 revenue requirement authorized by this Ordering Paragraph 1.
 - ii. The balances recorded in SDG&E’s General Rate Case Revenue Requirement Memorandum Account from January 1, 2016 until the effective date of the new tariffs required by this Ordering Paragraph, shall be amortized in rates beginning August 1, 2016 through ~~July 31, 2017~~ December 31, 2017.

OP 4. San Diego Gas & Electric Company, and Southern California Gas Company, shall each file a Tier 2 advice letter within 30 days of the effective date of this decision to establish a tax memorandum account to ~~record~~ track any revenue differences resulting from the income tax expenses forecasted in their GRC proceedings, and the tax expenses incurred by the utilities during the GRC period.

OP 5. San Diego Gas & Electric Company (SDG&E), and Southern California Gas

Company (SoCalGas), ~~are each directed to~~ may submit a request for a private letter ruling to the Internal Revenue Service (IRS) ~~to ensure in the event that~~ either company believes it needs IRS assurance that the rate base reductions adopted in today's decision ~~does~~ do not violate the IRS normalization rules.

- b. Consistent with our decision in Southern California Edison Company's 2015 GRC, as reflected in D.15-11-021, page 452, before ~~Before~~ submitting the private letter ruling to the IRS, SDG&E and SoCalGas shall each file a Tier 2 1 advice letter attaching the draft of the request for a private letter ruling to provide the Commission with an opportunity to review the draft ~~to ensure that the facts and circumstances set forth in the request are correct.~~
- c. SDG&E and SoCalGas shall file this Tier 2 1 advice letter within at least 30 ~~90 days of the effective date of this decision~~ before sending the request to the IRS. In the event that SDG&E or SoCalGas receives a relevant IRS ruling contradicting this decision, then it shall comply with the IRS's interpretation of the applicable tax laws by filing a Tier 2 advice letter with this Commission to seek an appropriate adjustment to its revenue requirement and/or rate base.

Proposed Revisions To Proposed Decision (PD)

- PD Page 45 SDG&E's original forecast of Electric Distribution O&M expenses was ~~\$140.119~~ 136.528 million, which is an increase of ~~\$32.637~~ 29.046 million over its 2013 adjusted-recorded expenses of \$107.482 million.
- PD Page 45 (Footnote 24) The \$140.119 million amount shown in Exhibit 70 varies slightly from the \$136.528 million shown in Table KN-2 of SDG&E's summary of earnings testimony in Exhibit 219 due to segmentation.
- PD Page 60 For TY 2016, SDG&E is requesting \$4.292 million, which is higher than its 2013 adjusted-recorded expenses of ~~\$3.572~~ 3.752 million.
- PD Page 63 SDG&E is requesting ~~\$0.822~~ 0.882 million, which is higher than its adjusted-recorded expenses of \$0.327 million.
- PD Page 63 Based on the testimony of SDG&E and ORA, and the 2014 recorded expenses, the agreed upon amount ~~\$0.422~~ 0.400 million...
- PD Page 121 **6.8.1.2.4. Shared Customer Service ~~Operations, Information, Technologies, Policies and Solutions~~ O&M Costs**
- PD Page 121 The fourth cost component of customer service operations, information, and technologies is activities for ~~non~~-shared customer service technologies, policies, and solutions.
- PD Page 144 As shown in the SDG&E Settlement Comparison Exhibit...Exhibit 193 – ~~\$90.482~~ 109.028 million for compensation, health, and welfare; Exhibit 121 – \$19.606 million for human resources, safety, disability, and workers' compensation; Exhibit 280 – ~~\$16.104~~ 9.550 million for pension and postretirement benefits other than pension;
- (Note: pension and postretirement benefits other than pension are not shown on the Settlement Comparison Exhibit because it was an uncontested issue.)*
- PD Page 145 Compensation costs are included ~~as in part of~~ in the A&G costs ~~but also~~ apply to other areas that include labor costs.
- PD Page 146 In the SDG&E Settlement Comparison Exhibit at 12, the settling parties stipulate to a compromise forecast of \$32 million for SDG&E's variable compensation. ~~The stipulation, however, does not resolve any policy issues regarding variable compensation.~~
- In the SoCalGas Settlement Comparison Exhibit at 10, the settling parties stipulate to a compromise forecast of \$25 million for SoCalGas' variable compensation. ~~The stipulation, however, does not resolve any policy issues~~

regarding variable compensation.

PD Page 146 The variable compensation costs of both SDG&E and SoCalGas are included as in part of in the compensation expense under the A&G expense but also apply to other areas that include labor costs.

PD Page 146 ~~On July 20, 2015, the Energy Division staff issued data requests to SDG&E and SoCalGas for information about its “at risk” compensation, and how that compensation may be related to safety metrics. These data requests are~~

PD Page 146 ~~(footnote) The staff data request also sought information regarding other subject areas. (See September 21, 2015 Assigned Commissioner’s Ruling.)~~

PD Page 147 ~~consistent with the issue identified in the February 5, 2015 scoping ruling at 7 of whether the utilities’ proposed risk management, safety culture, policies, and investments will result in the safe and reliable operations of the utilities’ facilities and services. After SDG&E and SoCalGas submitted their responses, the assigned Commissioner issued a ruling on September 21, 2015 seeking comments on the data responses, and to any objections to including the data responses of SDG&E and SoCalGas in the evidentiary record. The data responses of SDG&E and SoCalGas were attached to the September 21, 2015 ruling, which were later admitted into evidence as Exhibit 415 by the May 9, 2016 ruling of the ALJs.~~

~~The data requests regarding compensation raise the issue of how safety-related factors are considered in determining the award of variable compensation to the non-represented employees and executives of SDG&E and SoCalGas. The responses of SDG&E and SoCalGas in turn raise the related issue of whether the variable compensation formula adequately promotes a safety culture, or unduly benefits shareholders with the simple metric of the companies’ financial performance and earnings, and whether it creates a situation where the two interests are conflicting. More broadly, the data request responses offer a window into how each of the utilities and the Sempra Board of Directors (Board) signal their priorities to employees, and whether they are safety focused or earnings focused.~~

~~In response to the September 21, 2015 ruling, MGRA objected to a provision in SDG&E’s ICP which allows the Compensation Committee of Sempra’s Board to exercise its discretion in including up to 10% of the earnings impact of the wildfire litigation for ICP purposes. This could have the effect of increasing revenues or decreasing expenses for Sempra if SDG&E is successful in recovering the uninsured costs of wildfires from ratepayers.~~

PD Page 148 ~~MGRA contends that this type of incentive is contrary to ratepayer interests because it rewards SDG&E’s employees for seeking to have ratepayers pay~~

~~for the wildfire costs, even though SDG&E was at fault. MGRA is concerned that this ICP provision could incentivize SDG&E's employees to aggressively seek to recover from ratepayers the \$379 million in uninsured losses that resulted from the 2007 fires started by SDG&E lines. MGRA contends that this type of incentive could also weaken safety concerns because SDG&E's employees are incented to have ratepayers pay for these costs.~~

~~We note that today's decision does not prejudice or address the merits of the issues being litigated in A.15-09-010. SDG&E is seeking to recover from ratepayers \$379 million in costs that were recorded in its Wildfire Expense Memorandum Account that was established in response to the October 2007 wildfires in SDG&E's service territory in 2007. SDG&E incurred a total of \$2.4 billion in costs and legal fees to resolve the third party claims associated with those wildfires.~~

~~However, since this GRC is examining the costs associated with compensating SDG&E's employees over the TY 2016 GRC cycle, it is appropriate to review how the non-represented employees and executives at both SDG&E and SoCalGas are compensated under variable compensation.~~

~~We agree with MGRA that SDG&E should be prevented from compensating its employees, managers, and executives from variable compensation that is based on a recovery of monies from ratepayers for the wildfire costs that are being litigated before the Commission in A.15-09-010. In the case of these wildfire litigation costs, variable compensation should not be awarded to SDG&E's non-represented employees and executives when the award is tied to the recovery of the wildfire costs in A.15-09-010. This type of~~

PD Page 149 ~~financial incentive encourages SDG&E to aggressively pursue recovery of uninsured losses from its ratepayers, which can create the perverse incentive of minimizing safety-focused incentives while benefitting employees and management by shifting the costs of unsafe incidents onto ratepayers and being rewarded for doing so. The ICP should incentivize safety, instead of allowing this type of recovery which shifts the costs and risks of unsafe incidents onto ratepayers.~~

~~Accordingly, SDG&E is prevented during the TY 2016 GRC cycle from awarding variable incentive compensation to its employees, managers, and executives that is tied to the success of having ratepayers pay for some or all of the 2007 wildfire costs that are being litigated in A.15-09-010.~~

~~This line of inquiry and action is not isolated to the Applicants. In the wake of the disaster at San Bruno, the Independent Review Panel investigating the performance of PG&E and the CPUC found that:~~

In the gas transmission business, management made a faulty assumption. It did not make the connection among its high level goals, its enterprise risk management process, and the work that was actually going on in the company. We think that this failing is a product of the culture of the company—a culture whose rhetoric does not match its practices.” (Report of the Independent Review Panel San Bruno Explosion, Revised Copy, June 24, 2011, at 16.)

The CPUC is currently conducting an investigation (Order Instituting Investigation 15-08-019) into the role of PG&E’s board, executive governance, compensation, and the role of these high level activities at PG&E in producing a corporate culture that undercut safety in its operations. While we do not make the argument here that SDG&E, SoCalGas, or Sempra is culpable of actions or behavior that are the direct cause of any hazard or injury to the public or the

PD Page 150 environment, we do seek to prevent the adoption of incentives that may promote or induce bad corporate culture regarding safety.

Similarly, SDG&E and SoCalGas should not be allowed to award variable compensation in other similar kinds of situations resulting from an unsafe incident. For example, the Aliso Canyon leak in SoCalGas’ service territory caused the displacement of hundreds of families living in the nearby area, leaked a large amount of methane into the atmosphere, and resulted in significant costs. To award variable compensation to non-represented employees and executives for performance related to underground gas storage facilities, without considering an offset for the problems and costs incurred as a result of the leak, would be contrary to the interests of SoCalGas’ customers who fund the cost of the variable compensation. To do otherwise, would reward the non-represented employees and executives for unsafe incidents that have resulted because of the utilities’ prior actions. The non-represented employees and executives at SDG&E and SoCalGas should not be rewarded from variable compensation for unsafe incidents.

Currently, the Commission’s SED is investigating the causes of the well leakage at Aliso Canyon. Until that report is finished, it is premature for the Commission to open an Order Instituting Investigation into the causes of the Aliso Canyon leakage, whether past expenditures were appropriately spent to detect these kinds of problems, and whether SoCalGas’ ratepayers should bear any responsibility for the various costs incurred as a result of the leakage at Aliso Canyon. Those are all issues that should be examined in a future proceeding.

Still, SoCalGas shall be prevented during the TY 2016 GRC cycle from awarding variable compensation to its non-represented employees and executives for its operations at its gas storage facilities or at the Aliso-

~~Canyon~~

PD Page 151 ~~storage facility unless SoCalGas has taken into consideration the detrimental effects of the Aliso Canyon leak as a full or partial offset to such compensation. Such an offset will provide a check on any variable compensation that may be awarded based on the operational performance of SoCalGas' gas storage facilities, due to the detrimental effects of the Aliso Canyon leak.~~

~~Recently enacted legislation supports our review of compensation expense, and requires us to consider an additional dimension: executive compensation in light of events such as wildfires, the Aliso Canyon leak, and other incidents affecting the safe and reliable operation of utilities. Assembly Bill (AB) 1266 (Statutes of 2016, Chapter 599) added Public Utilities Code Section 706, which provides in part:~~

~~(b) For a five-year period following a triggering event, no electrical corporation or gas corporation shall recover expenses for excess compensation from ratepayers unless the utility complies with the requirements of this section and obtains the approval of the commission pursuant to this section.~~

~~Pub. Util. Code § 706 defines both “excess compensation” and a “triggering event”⁵³ and mandates in subdivision (f) that the Commission, “In every decision on a general rate case, shall require all authorized executive~~

PD Page 151 ~~(Footnote) Pub. Util. Code § 706(a)(1) provides: “Excess compensation’ means any annual salary, bonus, benefits, or other consideration of any value, paid to an officer of an electrical corporation or gas corporation that is in excess of one million dollars (\$1,000,000).”~~

~~Pub. Util. Code § 706(a)(2) provides: “A ‘triggering event’ occurs if, after January 1, 2013, an electric corporation or gas corporation violates a federal or state safety regulation with respect to the plant and facility of the utility and, as a proximate cause of that violation, ratepayers incur a financial responsibility in excess of five million dollars (\$5,000,000).”~~

PD Page 152 ~~compensation to be placed in a balancing account, memorandum account, or other appropriate mechanism so that this section can be implemented without violating any prohibition on retroactive ratemaking.”~~

~~Pursuant to Pub. Util. Code § 706(f) and the Commission’s broad ratemaking and enforcement authorities, SDG&E and SoCalGas will be ordered to file advice letters establishing Executive Compensation Memorandum Accounts. The memorandum accounts should track all monies for the annual salaries, bonuses, benefits, and all other consideration~~

~~of any value set aside to be paid to the officers of the utility which are authorized in this decision, and to track that against the salaries, bonuses, benefits, and all other consideration of any value, paid to its officers. The Tier 2 advice letters should also define “officers” of each company subject to Pub. Util. Code § 706, and the definitions and the scope of salaries, bonuses, benefits, and all other consideration of any value shall be subject to Commission approval.~~

~~Such memorandum accounts will allow the Commission review what was paid and awarded to an officer in the years after a triggering event, and to determine in a company’s application if any monies paid should be refunded (or allowed to be recovered in rates).~~

~~The amounts for variable compensation of \$32 million for SDG&E, and \$25 million for SoCalGas is subject to the Pub. Util. Code § 706 memorandum accounts discussed above.~~

~~We are interested in furthering the Legislature’s and the Commission’s own focus on safety and governance. As we stated, the data request responses (Exhibit 415) offer a window into how SDG&E and SoCalGas and the Sempra Board signal their priorities to employees, whether the priorities are~~

PD Page 153 ~~safety focused or earnings focused, and whether they are appropriately balanced.~~

~~Public Utilities Code Section 963(b)(3) declares:~~

~~It is the policy of the state that the commission and each gas corporation place safety of the public and gas corporation employees as **the top priority**. The commission shall take all reasonable and appropriate actions necessary to carry out the safety priority policy of this paragraph consistent with the principle of just and reasonable cost based rates. (Emphasis added.) (SB 705 (2011, Leno).)~~

~~In addition, Pub. Util. Code § 706 ties safety related incidents to excess compensation, and whether ratepayers should have to pay for that compensation.~~

~~One of the leading indicators of a safety culture is whether the governance of a company utilizes any compensation, benefits, or incentive to promote safety and hold employees accountable for the company’s safety record. As a matter of law, the Commission and the gas utilities are charged with creating a “culture of safety that will minimize accidents, explosions, fires, and dangerous conditions....” (Pub. Util. Code § 961(e)). As a matter of policy, the Commission promotes safety cultures at all utilities, not just the gas utilities. Among other things, the Commission committed to “[holding]~~

companies (and their extended contractors) accountable for safety of their facilities and practices,” “[providing] clear guidance on expectations for safety management and outcomes,” and “[promoting] a culture of safety vigilance by CPUC staff, and in the industries we regulate.” (*Safety Policy Statement of the California Public Utilities Commission*, adopted July 10, 2014.)

PD Page 154 The Commission will carry out these policies by requiring SDG&E and SoCalGas to include certain testimony in their next general rate case filings and by informing SDG&E, SoCalGas, and Sempra that their governance, safety record, and safety culture will inform our reasonableness review of their future general rate cases, including the entirety of their requests for any compensation or benefits expenses or indeed for any expenditure. Through these policies, the Commission is placing an emphasis on safety and risk-based decision making, as adopted in D.14-12-025.

The S-MAP and the RAMP processes are not yet fully implemented, the Commission’s consideration of SDG&E’s Wildfire Expense Memorandum Account in A.15-09-010 is still pending, and as discussed later in this decision, nothing in this decision forecloses the Commission’s ability to institute a formal investigation into the leak at the Aliso Canyon underground storage facility. Irrespective of any other pending or future proceeding, we place Sempra and SoCalGas on notice that we will scrutinize their management and governance that preceded, coincided with, and which followed the leak at the Aliso Canyon storage facility.

Insofar as Sempra and SoCalGas have any discretion to withhold, deny, or claw back compensation, bonuses, severances, or any other benefit relative to any aspect of the management, funding, operation,

PD Page 154 (Footnote) In D.14-12-025, the Commission adopted the S-MAP, and the RAMP. The S-MAP is to examine the models that the energy utilities use to prioritize and mitigate risks, and to establish guidelines and standards for the use of these models. The S-MAP is underway in the consolidated proceedings of A.15-05-002, A.15-05-003, A.15-05-004, and A.15-05-005. The intent of the RAMP is to examine the utility’s assessment of its key risks and its proposed programs for mitigating those risks in the context of its GRC filing.

PD Page 155 management, and oversight of Aliso Canyon, then Sempra and SoCalGas should exercise those rights consistent with Pub. Util. Code §§ 706 and 963(b)(3) and the state policy of placing the safety of the public and of employees as the top priority. We also put Sempra Energy and SoCalGas on notice that their (1) awarding of compensation, bonuses, severances, or any other benefit, and (2) decisions to refrain from or limit withholding or clawing back of compensation, bonuses, severances, or any benefit, that are

inconsistent with Pub. Util. Code § 963(b)(3) will directly inform the Commission's reasonableness evaluation of its future general rate case requests.

Further, to assist the Commission and the parties to gain a better understanding of whether and how safety policies, practices and performance are considered in the total compensation that is paid to non-represented employees and executives, we will require SDG&E and SoCalGas to provide additional information as part of its next GRC filing. This information shall also include information about the governance and level of engagement by Sempra's Board in influencing the variable compensation programs of SDG&E and SoCalGas.

In view of all the above considerations, in their next GRC applications, SDG&E and SoCalGas are directed to provide testimony of the actions taken during the 2016-2018 GRC cycle, supported by relevant workpapers, data, company documents, and reports containing the following information:

1. Describe what Board committees (for example, compensation committee, safety committee, or other committees) at Sempra, and at SDG&E or SoCalGas, are responsible for determining

the guidelines for establishing any compensation, bonuses, severances, and benefits.

2. Describe what direction Sempra provides to SDG&E or SoCalGas in formulating their compensation, bonuses, severances, and benefits.

3. Describe the qualifications of the Board members at Sempra and at SDG&E or SoCalGas who are responsible for determining the guidelines for establishing compensation, bonuses, severances, and benefits, and what committees they sit on.

4. Describe the coordination, if any, between the different committees that are responsible for developing the guidelines for establishing compensation, bonuses, severances, and benefits, and the frequency that these committees meet.

5. Describe the performance metrics and the measures used to set compensation, bonuses, severances, and benefits for nonrepresented employees and executives, and how these are used to determine them.

6. If applicable, describe how the compensation structure: creates long term and sustainable value for the utility; incentivizes employees; makes executives and managers personally accountable for safety and operational risks; creates a safer working environment and utility system; results in a demonstrated improvement of the utility's processes, policies, and performance; discourages below

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~~standard performance, or actions that are contrary to the interests of the utility and the utility's customers; holds employees, managers, and executives accountable for failure to comply with management's guidance, policies and instructions, and for below standard performance.~~

~~7. Describe how engaged and effective Sempra's Board is on operations, performance metrics, and safety-related incidents, including: how often Sempra's Board requests reports and/or presentations from SDG&E or SoCalGas regarding safety incidents, the effectiveness of risk management plans, and the effectiveness of operational processes; what Sempra's Board~~

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~~did or directed in response to these reports and/or presentations; and whether and how frequently Sempra's Board followed up or sought updates on the reports, presentations, and the Board's actions and directions.~~

~~8. Describe how risk management information is used by Sempra, SDG&E and SoCalGas; how the utilities share this information with their employees; describe the type of training or education that employees receive about management of risks; describe what processes are in place, if any, that allows the employees in the field to provide feedback on the management of risks, and the reporting of unsafe practices or unsafe incidents.~~

~~During the TY 2016 GRC cycle, the assigned Commissioner's office may request the staff of SED or the Energy Division to issue data requests of SDG&E and SoCalGas to provide further information regarding the operations and policies of the utilities, and the interrelationship with Sempra.~~

~~All of the above information will provide the Commission with a better understanding of: how risks are assessed and managed, how safety and risks are considered in the awarding of any compensation, bonus, severance, or benefit.~~

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(Footnote 58) In Exhibit 295 at page 1, SDG&E originally requested a total of \$420.902 million for the 2016 depreciation and amortization, which excludes legacy meter amortization sponsored by the summary of earnings witness in Exhibit 219. The total original depreciation and amortization request (including legacy meter amortization) reflected in SDG&E's summary of earnings is \$439.002 million.

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As for the flow-through of the 2015 funds ~~recorded~~ tracked into in the memorandum account, TURN contends the Commission should direct that the account balances in this memorandum account, as of the date of the GRC decision, should flow to ratepayers. TURN estimates that

approximately \$20 million would be flowed through to ratepayers for 2015. In the alternative, TURN proposes that the amounts ~~recorded~~ tracked in the memorandum accounts be normalized.

- PD Page 196 In addition, and for the reasons stated above, we adopt TURN's proposal to flow-through the balance to ratepayers in the repairs deduction memorandum accounts that were in place for most of 2015. These memorandum accounts ~~recorded~~ tracked in the revenue impacts resulting from the election of the repairs deduction as compared to the PRA method. The Applicants shall file a Tier 1 AL within 30 days of the issuance of this decision to flow-through the balance in the account to ratepayers and to include workpapers showing how the balance was calculated.
- PD Page 196 Similar to what we ordered in SCE's TY 2015 GRC proceeding, SDG&E and SoCalGas shall each establish a two-way tax memorandum account to ~~record~~ track any revenue differences resulting from the differences in the income tax expense forecasted in the GRC proceedings of SDG&E and SoCalGas, and the tax expenses incurred by them during the GRC period.
- PD Page 254 This amount is the same as what ~~SDG&E~~ SoCalGas had requested in its application...
- PD Page 268 In Exhibit 307, SoCalGas originally proposed that the total amount of ~~\$82.305~~ 98.362 million be reassigned to capital.
- PD Page 276 (Footnote 110) In its Summary of Recommendations in Exhibit 396 at 4, ORA appears to have mistyped the rate base amount as \$4.808 billion instead of \$4.080 billion. In ORA's summary of earnings table for SoCalGas in Exhibit 367, the amount of \$4,087,654 thousand is shown for rate base.
- PD Page 277 Using the ~~agreed-upon~~ adopted rate base amount of ~~\$4,137,633,000~~ 3,974,851,000...

APPENDIX C
TAX-RELATED CORRECTIONS TO THE RO MODEL AND
OTHER CALCULATIONS

SDG&E and SoCalGas 2016 GRC
Appendix C

Sections 1 - 4 as Revised by SDG&E and SoCalGas

Table of Contents

Section	Content
1	Summary of Rate Base Reductions
2	Southern California Gas - Rate Base Calculations
3	San Diego Gas & Electric / Gas - Rate Base Calculations
4	San Diego Gas & Electric / Electric - Rate Base Calculations

SDG&E and SoCalGas 2016 GRC
Revenue Requirement Impact of Rate Base Reduction
Section 1 as Revised by SDG&E and SoCalGas

I. Summary of Calculations

Southern California Gas	NPV Costs**	Rate Base Reductions
	\$ 50,361	\$ 37,958
		See Section 2

San Diego Gas & Electric	NPV Costs**	Rate Base Reductions
Gas Revenue Requirement	\$ -	\$ -
Electric Revenue Requirement	\$ 43,778	\$ 31,670
SDG&E Total GRC Revenue Requirement	\$ 43,778	\$ 31,670
		See Section 3
		See Section 4

**Reference: TURN's motion to enter late-submitted exhibit into the Evidentiary Record, Workpapers, Page 1.
NPV Costs to Ratepayers are the higher future taxes due to forgone depreciation deductions less Section 481a adjustments, discounted to present value.

II. Adjustments in the RO model

Reductions were made to the Rate Base in the RO model. The following were the changes made to the RO model:

- 1) Southern California Gas
 - a) File Name: rbSCGTotals.xlsx, Tab: "Summarization": Adjustment of (\$37,958) was made to cell: F23
- 2) San Diego Gas & Electric
 - a) File Name: rbSDGETotals.xlsx, Tab: "SummaryTotalRB": Adjustment of (\$31,670) was made to cell: F21
 - b) File Name: rbSDGETotals.xlsx, Tab: "SummaryElectric": Adjustment of (\$31,670) was made to cell: F20
 - c) File Name: rbSDGETotals.xlsx, Tab: "SummaryGas": Adjustment of \$0 was made to cell: F21
 - d) File Name: rbSDGETotals.xlsx, Tab: "ElecDislRatebase": Adjustment of (\$31,670) was made to cell: F20
 - e) File Name: sum.xlsx, Tab: "Input 2": Made adjustments of (\$31,670) to Electric Rate Base and \$0 to Gas Rate Base to Row 40

III. Revenue Impacts

- 1) Our models (shown in pages 2-4 of these workpapers) ESTIMATE that the 2016 Revenue Requirement impact of these Rate Base Reductions are:
 - a) Southern California Gas: Reduction of \$4.533M
 - b) San Diego Gas & Electric - Electric Revenue Requirement: Reduction of \$3.808M
 - c) San Diego Gas & Electric - Gas Revenue Requirement: Reduction of \$0
- 2) The Results of Operations model calculated that the ACTUAL 2016 Revenue Requirement impact of these Rate Base Reductions are:
 - a) Southern California Gas: Reduction of \$4.726M
 - b) San Diego Gas & Electric - Electric Revenue Requirement: Reduction of \$3.984M
 - c) San Diego Gas & Electric - Gas Revenue Requirement: Reduction of \$0
- 3) The ESTIMATED revenue requirements are within a 2% margin of error from the ACTUAL revenue requirement. See table below.

	Actual Rev Req Calculated by RO model	Estimated Rev Req	% Diff
SDGE/Gas	\$0	\$0	0.0%
SDGE/Electric	\$3,984	\$3,808	4.4%
SCG	\$4,726	\$4,533	4.1%

SoCalGas 2016 GRC

Revenue Requirement Impact of Rate Base Reduction

Section 2 as Revised by SoCalGas

Southern California Gas

(in \$000s)

Total Rate Base Reduction

\$ 37,958

Wt Cost of Capital (Rate of Return on RB)
Income Tax Gross up
FF&U NTG
NTG Multiplier (adjusting for Taxes & FFU)

8.02%
1.68765
1.01737
1.71697

Federal & State Tax Rate
Uncollectible Rate
Franchise Fee Rate

40.746%
0.298%
1.414%

Total Revenue Requirement Impact 2016-2038 (Nominal \$):	(90,086)
Net Present Value of Revenue Requirement Impact (2016 \$):	(50,361)

	Capital Ratio	Cost	Weighted	Gross Up for Taxes & FFU
Long Term Debt	45.60%	5.77%	2.63%	2.68%
Preferred Stock	2.40%	6.00%	0.14%	0.25%
Common Equity	52.00%	10.10%	5.25%	9.02%
Total	100.00%		-8.03%	11.94% ^a

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Rate Base	^b (37,958)	(36,233)	(34,508)	(32,782)	(31,057)	(29,331)	(27,606)	(25,881)	(24,155)	(22,430)	(20,705)	(18,979)
Depreciation	^c	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)

Revenue Requirement Calculations (Bottoms Up)

Return on Ratebase, after Gross Up	^{a*b} (4,533)	(4,327)	(4,121)	(3,915)	(3,709)	(3,503)	(3,297)	(3,091)	(2,885)	(2,678)	(2,472)	(2,266)
Depreciation Expense	^c	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)
Revenue Requirement (Nominal)	^{(a*b)+c} (4,533)	(6,052)	(5,846)	(5,640)	(5,434)	(5,228)	(5,022)	(4,816)	(4,610)	(4,404)	(4,198)	(3,992)

Net Present Value Calculations*

Time Period	0	1	2	3	4	5	6	7	8	9	10	11
Rev Req in 2016\$	(4,533)	(5,603)	(5,010)	(4,475)	(3,991)	(3,555)	(3,161)	(2,806)	(2,487)	(2,199)	(1,941)	(1,709)
Net Present Value	(50,361)											

* Discount Rate used is the Cost of Capital, 8.02%.

SoCalGas 2016 GRC
Revenue Requirement Impact of Rate Base Reduction
Section 2 as Revised by SoCalGas

Southern California Gas
(in \$000s)

Total Rate Base Reduction

Wt Cost of Capital (Rate of Return on RB)
Income Tax Gross up
FF&U NTG
NTG Multiplier (adjusting for Taxes & FFU)

Federal & State Tax Rate
Uncollectible Rate
Franchise Fee Rate

	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	Total
Rate Base	b	(17,254)	(15,528)	(13,803)	(12,078)	(10,352)	(8,627)	(6,902)	(5,176)	(3,451)	0	-
Depreciation	c	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(37,958)

Revenue Requirement Calculations (Bottoms Up)

Return on Ratebase, after Gross Up	a*b	(2,060)	(1,854)	(1,648)	(1,442)	(1,236)	(1,030)	(824)	(618)	(412)	(206)	0	(52,127)
Depreciation Expense	c	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(1,725)	(37,958)
Revenue Requirement (Nominal)	(a*b)+c	(3,786)	(3,580)	(3,374)	(3,168)	(2,962)	(2,756)	(2,550)	(2,343)	(2,137)	(1,931)	(1,725)	(90,086)

Net Present Value Calculations*

Time Period	12	13	14	15	16	17	18	19	20	21	22	
Rev Req in 2016\$	(1,500)	(1,313)	(1,146)	(996)	(862)	(742)	(636)	(541)	(457)	(382)	(316)	(50,361)
Net Present Value												

* Discount Rate used is the Cost of Capital, 8.02%.

SDG&E 2016 GRC

Revenue Requirement Impact of Rate Base Reduction
Section 3 as Revised by SDG&E

San Diego Gas & Electric - Gas

(in \$000s)

Total Rate Base Reduction

\$	-
----	---

Wt Cost of Capital (Rate of Return on RB)

7.79%
1.68765
1.02295
1.72637

FF&U NTG - Gas

NTG Multiplier (adjusting for Taxes & FFU) - Gas

Federal & State Tax Rate

Uncollectible Rate - Gas

Franchise Fee Rate - Gas

40.746%
0.174%
2.073%

	Capital Ratio	Cost	Weighted	Gross Up for Taxes & FFU
Long Term Debt	45.25%	5.00%	2.26%	2.31%
Preferred Stock	2.75%	6.22%	0.17%	0.30%
Common Equity	52.00%	10.30%	5.36%	9.25%
Total	100.00%		7.79%	11.86% ^a

Total Revenue Requirement Impact 2016-2042 (Nominal \$):	0
Net Present Value of Revenue Requirement Impact (2016 \$):	0

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Rate Base		-	-	-	-	-	-	-	-	-	-	-	-	-
Depreciation		-	-	-	-	-	-	-	-	-	-	-	-	-

Revenue Requirement Calculations (Bottoms Up)

Return on Ratebase, after Gross Up	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Depreciation Expense		-	-	-	-	-	-	-	-	-	-	-	-	-
Revenue Requirement (Nominal)		-	-	-	-	-	-	-	-	-	-	-	-	-

Net Present Value Calculations*

Rev Req in 2016\$	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Present Value	-	-	-	-	-	-	-	-	-	-	-	-	-	-

* Discount Rate used is the Cost of Capital, 7.79%.

NOTE Added by SDG&E:

SDG&E did not change its method of accounting for gas repairs; therefore, there should be no adjustment allocated to gas repairs, and the full adjustment should be allocated to electric distribution assets.

A.14-11-003, A.14-11-004

SDG&E 2016 GRC
Revenue Requirement Impact of Rate Base Reduction
Section 3 as Revised by SDG&E

San Diego Gas & Electric - Gas
(in \$000s)

Total Rate Base Reduction

Wt Cost of Capital (Rate of Return on RB)
Income Tax Gross up
FF&U NTG - Gas
NTG Multiplier (adjusting for Taxes & FFU) - Gas

Federal & State Tax Rate
Uncollectible Rate - Gas
Franchise Fee Rate - Gas

	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	Total
Rate Base	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Depreciation	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Revenue Requirement Calculations (Bottoms Up)														
Return on Ratebase, after Gross Up	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Depreciation Expense	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Revenue Requirement (Nominal)	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Net Present Value Calculations*														
Rev Req in 2016\$	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Net Present Value														

* Discount Rate used is the Cost of Capital, 7.79%.

NOTE Added by SDG&E:

SDG&E did not change its method of accounting for gas repairs; therefore, there should be no adjustment allocated to gas repairs, and the full adjustment should be allocated to electric distribution assets.

SDG&E 2016 GRC

Revenue Requirement Impact of Rate Base Reduction

Section 4 as Revised by SDG&E

San Diego Gas & Electric - Electric

(in \$000s)

Total Rate Base Reduction

\$ 31,670

Wt Cost of Capital (Rate of Return on RB)

Income Tax Gross up

FF&U NTG - Electric

NTG Multiplier (adjusting for Taxes & FFU) - Electric

Federal & State Tax Rate

Uncollectible Rate - Electric

Franchise Fee Rate - Electric

Total Revenue Requirement Impact 2016-2042 (Nominal \$):	(83,072)
Net Present Value of Revenue Requirement Impact (2016 \$):	(43,785)

	Capital Ratio	Cost	Weighted	Gross Up for Taxes & FFU
Long Term Debt	45.25%	5.00%	2.26%	2.35%
Preferred Stock	2.75%	6.22%	0.17%	0.30%
Common Equity	52.00%	10.30%	5.36%	9.38%
Total	100.00%		7.79%	12.02% ^a

40.746%
0.174%
3.427%

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Rate Base	^b	(31,670)	(30,452)	(29,234)	(28,016)	(26,798)	(25,580)	(24,362)	(23,144)	(21,926)	(20,707)	(19,489)	(18,271)	(17,053)
Depreciation	^c	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)

Revenue Requirement Calculations (Bottoms Up)

Return on Ratebase, after Gross Up	^a ^b	(3,808)	(3,661)	(3,515)	(3,368)	(3,222)	(3,075)	(2,929)	(2,782)	(2,636)	(2,490)	(2,343)	(2,197)	(2,050)
Depreciation Expense	^c	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)
Revenue Requirement (Nominal)	^{(a+b)+c}	(3,808)	(4,879)	(4,733)	(4,586)	(4,440)	(4,293)	(4,147)	(4,001)	(3,854)	(3,708)	(3,561)	(3,415)	(3,268)

Net Present Value Calculations*

Rev Req in 2016\$	(3,808)	(4,527)	(4,073)	(3,662)	(3,289)	(2,951)	(2,644)	(2,366)	(2,115)	(1,888)	(1,682)	(1,496)	(1,329)	(1,177)
Net Present Value	(43,785)													

* Discount Rate used is the Cost of Capital, 7.79%.

SDG&E 2016 GRC

Revenue Requirement Impact of Rate Base Rec
Section 4 as Revised by SDG&E

San Diego Gas & Electric - Electric
(in \$000s)

Total Rate Base Reduction

Wt Cost of Capital (Rate of Return on RB)

Income Tax Gross up

FF&U NTG - Electric

NTG Multiplier (adjusting for Taxes & FFU) - Electric

Federal & State Tax Rate

Uncollectible Rate - Electric

Franchise Fee Rate - Electric

	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	Total	
Rate Base	b	(14,617)	(13,399)	(12,181)	(10,963)	(9,745)	(8,527)	(7,309)	(6,090)	(4,872)	(3,654)	(2,436)	(1,218)	(0)	-
Depreciation	c	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(31,670)

Revenue Requirement Calculations (Bottoms Up)

Return on Ratebase, after Gross Up	a*b	(1,757)	(1,611)	(1,464)	(1,318)	(1,172)	(1,025)	(879)	(732)	(586)	(439)	(293)	(146)	(0)	(51,402)
Depreciation Expense	c	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(1,218)	(31,670)
Revenue Requirement (Nominal)	(a*b)+c	(2,975)	(2,829)	(2,683)	(2,536)	(2,390)	(2,243)	(2,097)	(1,950)	(1,804)	(1,657)	(1,511)	(1,365)	(1,218)	(83,072)

Net Present Value Calculations*

Rev Req in 2016\$	(1,041)	(918)	(808)	(708)	(619)	(539)	(468)	(404)	(346)	(295)	(250)	(209)	(173)	(43,785)
Net Present Value														

* Discount Rate used is the Cost of Capital, 7.79%.

SoCalGas

Correction to Tax Basis Related to 2015 Tax Repairs Memorandum Account

Purpose of Adjustment: SoCalGas forecasted repairs deductions of \$88 million for 2015 in its RO model. Since these amounts are tax repair deductions, they cannot be subject to tax depreciation as well, so a basis adjustment equal to the forecasted repairs deduction of \$88 million was made before computing tax depreciation on capital additions in the RO model. However, per the Proposed Decision, actual results tracked in the tax repairs memorandum account will be flowed to ratepayers as a reduction to tax expense in the cost of service. Therefore, a corollary adjustment is needed to revise the tax depreciation basis adjustment for 2015 in the RO model to match the actual gross 2015 repairs deduction of \$141 million. If this correction to tax basis is not made, the bonus depreciation deduction will be overstated.

The revised tax basis adjustment reconciles to incremental revenue requirement impact of the 2015 repairs deduction as follows:

		2015	
		Federal	State
Gross 2015 Repairs Deduction (Federal Portion Equals the Revised Tax Basis Adjustment) ¹	[a]	\$ (141,171)	\$ (140,449)
2012-2015 Depreciation Offset for Repairs at a Book Depreciation Rate of 2.84%	[b]	15,807	15,807
2015 Repairs Deduction, Net of Depreciation	[c] = [a]+[b]	(125,364)	(124,642)
Percentage Repair Allowance ("PRA") Gross Repairs Deduction for 2015 as Reflected in the 2012 GRC ²	[d]	(16,574)	(48,061)
Add back: Depreciation Offset at Book Depreciation Rate of 2.84%	[e]	471	1,365
Percentage Repair Allowance Method Deduction, Net of Depreciation	[f] = [d]+[e]	(16,103)	(46,696)
Difference Between Repairs and PRA Method	[g] = [c]-[f]	(109,261)	(77,946)
Incremental Tax (Benefit) / Expense	[h] = [g]*tax rate	(38,241)	(6,890)
Federal (Benefit)/Expense of State Incremental Tax	[i]	2,412	
Total Incremental Tax (Benefit) / Expense	[j] = [h]+[i]	(35,830)	(6,890)
Revenue Requirement Gross Up Factor	[k]	1.68746	1.68746
Incremental Revenue Requirement Impact of 2015 Repairs Deduction	[l] = [j]*[k]	(60,461)	(11,627)
Incremental Revenue Requirement Impact of 2015 Repairs Deduction per the Form 8K filed on May 25, 2016	Sum of [l]	\$ (72,089)	

NOTES:

¹ Only the federal amount of the basis adjustment is taken into account for purposes of correcting the bonus depreciation calculation because California does not conform to the federal bonus depreciation rules.

² Calculated as the 2012 Test Year Amount with Escalation Factors Applied through 2015.

The following are the files, tabs, and cells changed in the RO Model:

File name: taxSCGDeferred.xlsm, Tab: "2015RMFedDepronAdds", Cell: C15, Amount: (\$110,819)

File name: taxSCGDeferred.xlsm, Tab: "2015RMFedDepronAdds", Cell: E15, Amount: (\$30,352)

Rev Req Impact of Tax Basis Adjustment Calculated by RO Model: \$2,070

SDG&E

Correction to Tax Basis Related to 2015 Tax Repairs Memorandum Account

Purpose of Adjustment: SDG&E forecasted electric distribution repairs deductions of \$82 million for 2015 in its RO model. Since these amounts are tax repair deductions, they cannot be subject to tax depreciation as well, so a basis adjustment equal to the forecasted repairs deduction of \$82 million was made before computing tax depreciation on capital additions in the RO model. However, per the Proposed Decision, actual results tracked in the tax repairs memorandum account will be flowed to ratepayers as a reduction to tax expense in the cost of service. Therefore, a corollary adjustment is needed to revise the tax depreciation basis adjustment for 2015 in the RO model to match the actual gross 2015 electric distribution repairs deduction of \$84 million. If this correction to tax basis is not made, the bonus depreciation deduction will be overstated.

The revised tax basis adjustment reconciles to incremental revenue requirement impact of the 2015 repairs deduction as follows:

		2015	
		Federal	State
Gross 2015 Repairs Deduction (Federal Portion Equals the Revised Tax Basis Adjustment) ¹	[a]	\$ (83,559)	\$ (83,559)
2011-2015 Depreciation Offset for Repairs at a Book Depreciation Rate of 3.78%	[b]	15,313	15,313
2015 Repairs Deduction, Net of Depreciation	[c] = [a]+[b]	(68,246)	(68,246)
Percentage Repair Allowance ("PRA") Gross Repairs Deduction for 2015 as Reflected in the 2012 GRC ²	[d]	(10,561)	(50,370)
Add back: Depreciation Offset at Book Depreciation Rate of 3.78%	[e]	798	3,808
Percentage Repair Allowance Method Deduction, Net of Depreciation	[f] = [d]+[e]	(9,763)	(46,562)
Difference Between Repairs and PRA Method	[g] = [c]-[f]	(58,483)	(21,684)
Incremental Tax (Benefit) / Expense	[h] = [g]*tax rate	(20,469)	(1,917)
Federal (Benefit)/Expense of State Incremental Tax	[i]	671	
Total Incremental Tax (Benefit) / Expense	[j] = [h]+[i]	(19,798)	(1,917)
Revenue Requirement Gross Up Factor	[k]	1.68746	1.68746
Incremental Revenue Requirement Impact of 2015 Repairs Deduction	[l] = [j]*[k]	(33,409)	(3,235)
Incremental Revenue Requirement Impact of 2015 Repairs Deduction per the Form 8K filed on May 25, 2016	Sum of [l]	\$ (36,643)	

NOTES:

¹ Only the federal amount of the basis adjustment is taken into account for purposes of correcting the bonus depreciation calculation because California does not conform to the federal bonus depreciation rules.

² Calculated as the 2012 Test Year Amount with Escalation Factors Applied through 2015.

The following are the files, tabs, and cells changed in the RO Model:

File name: taxSDGEDeferred.xlsb, Tab: "2015RMFedDepronAdds", Cell: C15, Amount: (\$83,559)

Rev Req Impact of Tax Basis Adjustment Calculated by RO Model: \$30

APPENDIX D
GENERAL CORRECTIONS TO THE RESULTS OF
OPERATIONS MODEL

SAN DIEGO GAS & ELECTRIC COMPANY
TEST YEAR 2016
SONGS Marine Mitigation Update
(\$ Thousands)

No	Description	Type	Work Group or Budget Code	PD Page	PD TEXT ¹	PD RO MODEL	Revision to RO ²
1	SONGS O&M Marine Mitigation	O&M	1ES000-000	104	-	-	1,100
2	SONGS Capital Marine Mitigation (2014-2016)	Capital	000050.001	104	-	9,388	-
Total					-	9,388	1,100

¹ The PD approves SDG&E's request to update its revenue requirement to reflect its 20% share of SONGS-related marine mitigation costs authorized by the Commission in SCE's 2015 GRC (D.15-11-021)

² SCE D.15-11-021 pg. 283-289

APPENDIX E
RATE COMPARISON TABLE

SDG&E and SoCalGas Rate Comparison Schedule

		12-month amortization (Proposed Decision)		17-month amortization	
Company	Segment	Rate Impact¹	Bill Impact²	Rate Impact¹	Bill Impact²
SDG&E	Electric	1.2% \$	1.32	1.2% \$	1.38
SDG&E	Gas	-1.1% \$	(0.43)	-0.8% \$	(0.32)
SoCalGas	Gas	2.7% \$	1.19	2.9% \$	1.28

Notes:

1. Rate Impact

Electric Rate Impact assumes current franchise fees and uncollectible (FF&U) factors, the SONGS marine mitigation revenue requirement authorized in SCE's 2016 GRC, and a tax benefit of \$36.6 million (w/o FF&U).

Gas Rate Impact is System Average Bundled rate impact and a SoCalGas tax benefit of \$72.1 million (w/o FF&U).

2. Bill Impact

Electric Bill Impact represents a summer bill for a typical non-CARE residential customer with Basic Service in the Inland climate zone using 500 kWh.

Gas Bill Impact is Gas Average Residential Bill (37 therms at SCG and 26 therms at SDG&E) impact.